IN THE

SUPREME COURT OF THE UNITED STATES

TERM 1979

NO. 79-776

ERICH KOKER and BEATRICE E. KOKER, husband and wife,
Plaintiff/Appellant/Petitioner

V

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, Jr.

Defendants,
Respondents.

JURISDICTIONAL STATEMENT

ON APPEAL FROM:
THE SUPREME COURT OF THE STATE OF WASHINGTON
#45846 And #46169

COURT OF APPEALS DIVISION I STATE OF WASHINGTON
#4916-I

EXTENSION OF TIME FOR JURISDICTION STATEMENT GRANTED BY THE SUPREME COURT OF THE UNITED STATES Appendix A-15(c)(d)

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Pro Se

I N D E X

+ Court of Appeals Decision p 55

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APPENDIX: THIRD SECTION:

II Citation II See: Page 92 Herein
Second Citation

Reference: Chicago B & Q R. Co V Chicago
166 U.S. 226, 246:

Graham v Gill,
223 U. S. 643, 645:

I N D E X

APPENDIX: FOURTH SECTION:

TABLE OF CASES

I N D E X

U. S. C. A.

TREATISE

WASHINGTON STATE CONSTITUTION

WASHINGTON STATE STATUTES

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OTHER

REPEAL OF REHEARING

APPEAL TO THE UNITED STATES SUPREME COURT

APPENDIX A-15(a)(b)

EXTENSION OF TIME GRANTED

APPENDIX A-15(c)(d)

THIS JURISDICTIONAL STATEMENT WILL BE WRITTEN AS CONSTRUCTIVE REPORTING OF FACTS, AND NOT AS CRITICISM OF HONORABLE JUDGES WHOM I RESPECT.

Beatrice E. Koker
Pro Se

JURISDICTIONAL STATEMENT

A Revelation: Appendix: B-1: B-2: B-3:
B-4: B-5: B-6:
B-7: B-8:

This appeal to the United States Supreme Court is for reversal of an unfair trial for new trial or in the alternative additur, and for reversal of the Washington State Court Of Appeals Division I, and appeal of denial of Petition for Review BECAUSE the nature of the trial included deceit, untruths, misleading the jury, misrepresention and suppression of fact, concealment, ommissions, wrongful acts, abuse of discretion by lack of court investigation and other.

There is a jury so confused it took the jury foreman approximately 2 hours to convince the jurors the victim of permanent injuries is NOT GUILTY! The shock is two-fold: Not only the fact of having to convince the jury the victim is innocent in a civil action, but THE TIME ELEMENT in hours that it took to convince the jurors of the innocence of an accident, the victim of permanent injuries.

The circumstances of this trial cannot ever meet the fair trial standards under the Constitution of the United States.

Surprise: The defense attorney in this trial cross-examined Beatrice Koker, this petitioner, for a TOTAL OF 11 LINES.

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CHRONOLOGICAL SUMMARY

JURISDICTIONAL STATEMENT

Quoting: HAND, Learned - 9 Brief Case No. 4 p 5 (1951)

"If we are to keep our democracy,
there must be one commandment:
Thou shalt not ration justice."

PROCEEDINGS BELOW

Chronological Summary

June 4, 1971: THE ACCIDENT Appendix A-19:

February 10, 1975: First Trial. MISTRIAL

June 9, 1976: SECOND TRIAL BEGAN

June 15, 1976: SECOND TRIAL ENDED.

Please Note: In the Chronological Summary to follow, the numbers to the left of the orders and rulings and information will be correlated to the numbers of the Appendix. (A)

The length of the summary is due to the ban of rehearing in the State of Washington Supreme Court. ROA I-50 repealed.

COURT OF APPEALS

(1) June 15, 1976: JURY VERDICT. $4,600.

(2) June 30, 1976: MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE ADDITUR CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9): "DENIED"

(3) July 29, 1976: NOTICE OF APPEAL TO Court of Appeals Division I - State of Wash.

(4) June 5, 1978: "AFFIRMED" TRIAL COURT

(5) August 8, 1978: MOTION RECONSIDERATION "DENIED"

STATE OF WASHINGTON SUPREME COURT

(6) February 2, 1979: EN BANC "DENIAL" PETITION FOR REVIEW

(7) February 6, 1979: "REHEARING BAN"

ROA I-50 repealed in State of Washington and no rehearing possible. Letter so stating.

Please Note: Letter-evidence found. No rehearing allowed. Jurisdiction is now in the Court of Appeals Division I.

THE MANDATE HAD NOT BEEN ISSUED!

COURT OF APPEALS

(8) March 6, 1979: Letter-Evidence Motion Re: deceit, submitted to Court of Appeals before mandate was issued. Clerk denied. Resubmitted under Rule 17.7.

The notification letter of March 6, 1979 was sent to petitioner 6 days after the Court of Appeals on motions: "denied."

(9) March 7, 1979: Mandate issued within 24 hours of notification of denial of motions. Motions denied 6 days before.

(10) Docket Card does not list the notification letter of March 6, 1979 in Appendix A-8

(11) April 13, 1979: MOTION TO RECALL MANDATE "DENIED."

STATE OF WASHINGTON SUPREME COURT

(12) (12-(a)(12-(b) April 16, 1979: APPEAL-DISCRETIONARY REVIEW. To review denial of motion to recall mandate, denial of motion RAP 12.7(a) Letter-Evidence and 17.7 (same). To reopen petition for review. All to be done EN BANC.

(13) May 31, 1979: DISCRETIONARY REVIEW "DENIED" BY COMMISSIONER

STATE OF WASHINGTON SUPREME COURT

(13-(a) June 8, 1979: MOTION 17.7 TO MODIFY denial of discretionary review by commissioner. Entire motion attached to indicate reason for denial of motion erroneous.

(14) July 20, 1979: "DENIED." FINAL RULING EXHAUSTION OF REMEDIES IN STATE

UNITED STATES SUPREME COURT

(15) August 7, 1979: APPEAL FOR UNITED STATES SUPREME COURT.

(16) MEMORANDUM: From deputy Federal District VERIFIES ORIGINAL FILES ARE IN STATE SUPREME CT.

COURT OF APPEALS

(17) September 10, 1979: ORIGINAL FILE OF petitioner Appellate Court #4916-I and Exhibits all records released from custody, jurisdiction, protection of The Court of Appeals Division I. RELEASE OF THE ENTIRE FILE NOT DOCKETED UNTIL AFTER DISCOVERY FILE WAS MISSING BY PETITIONER. Appendix A-17(a): Appendix A-17(b): PROOF.

STATE OF WASHINGTON SUPREME COURT

(A-18(a): (A-18(b): October 1, 1979:

Motion Special Accelerated Proceedings to Washington State Supreme Court to Re-Certify records out of custody of appellate court 46 days. Motion made under RAP 17.7 to insure the ruling by JUDGES ONLY.

(A-23:) October 10, 1979: The Clerk of the State Supreme Court ruled to shelve the motion in which terms and sanctions were asked. Recertification immediately as there is a pending civil action affected by this act of releasing original files still on appeal and in civil action.

(A-24:) October 11, 1979: PETITIONER'S REPLY.

IIII IIII

Please Note: A motion for rehearingwould have eliminated Appendix A-8: A-9: A-10: A-11: A-12(a): A-12(b): A-13: A-13(a): A-14:

The proper and most expeditious way to have had finality of ruling in this case, would be one ruling: "REHEARING" after the denial of petition for review.

The federal grounds for jurisdiction relates to the repealing of "rehearing" ROA I-50. It is evident to what extent this appeal has been affected by the denial of a constitutional right.

JURISDICTIONAL STATEMENT

OPINIONS BELOW
(Explained)

The major part of a decade has elapsed since the automobile wreck June 4, 1971. The defense admitted liability as the defendant was drinking, speeding, drove through an arterial stop sign and had defective brakes. Plaintiff's car was totaled out. Appendix A-19:

The first trial ended in mistrial February 1975. The reason presented by the defense attorney not to go on with 11 jurors was that plaintiff doctor "refused" to testify. The doctor disproved that as a reason in his own handwriting deciphered in Appendix A-21: Further information plus revealing untruth told in obtaining continuance by defense attorney: Appendix A-20:

The attitude of defense attorney towards plaintiff in 1975 trial is in Appendix B-5:

TRIAL OF 1976 AND THE APPEAL IN THE STATE:

All opinions below in the State of Wash. Courts have been adverse to plaintiff/petitioner. This appeal to the United States Supreme Court on Federal Grounds is an appeal from the trial court's denial of motion for new trial or in the alternative additur under CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9). App. A-2: And all elements of the Notice of Appeal to the United States Supreme Court. Appendix: A-15(a) and Appendix A-15(b):

The damage for permanent injuries jury verdict is $4,600. for permanent drop foot injury, wearing a leg brace for life, and permanent cervical injury and a knee injury. Appendix A-1: (Jury Verdict)

The jury was so confused it took a jury foreman approximately 2 hours to CONVINCE the jury the plaintiff-victim was "not guilty." Appendix B-1:

The appeal to Court of Appeals Division I State of Washington was filed pro se. The attorney of record abandoned plaintiff after trial without counsel. Appendix A-3:

The Court of Appeals "affirmed" the jury award of $4,600. for a drop foot injury plus other injuries. Appendix A-4:

The Court of Appeals decision is in conflict with their own ruling in another case in which they state that $145,000. is "within the bounds of sensible thought." This was for a drop foot injury! Ryan V Westgard 12 Wash App 500 (1975)

A motion for reconsideration was filed with the court of Appeals and "DENIED." Appendix A-5:

A petition for review to the Washington State Supreme Court "DENIED EN BANC." Appendix A-6:

Beatrice Koker sent notice of intention for motion for rehearing and to verify the date of filing and was notified by the State Supreme Court there is no rehearing as ROA I-50 is repealed. Appendix A-7:

The mandate had not been issued. The petitioner found a letter imperative to the deceit in trial. No rehearing. The letter-evidence was filed in the Court of Appeals RAP 12.7(a). The clerk of that court sent it back. The motion was refiled under RAP 17.7 and the judges accepted the motion and ruled upon it. "Denied."

The denial was done 6 days before the petitioner was notified and within 24 hours of notification of the denied ruling, the mandate was issued. The right to ask for review on a denied motion was estopped. Appendix: A-8: Appendix A-9:

The docket card of the Court of Appeals does not record the letter of notice of denial of a motion, it is missing. Appendix A-10:

Motion to recall mandate "denied." Appendix A-11:

An appeal was put into the State Supreme Court to review the denial of the ruling on the motion regarding letter-evidence of deceit in trial, to recall the mandate and open the petition for review EN BANC. The State Supreme Court called my appeal a "discretionary review." Appendix A-12: Appendix A-12(a): Appendix A-12(b):

The entirety of two documents are attached only after thorough consideration, but federal grounds are involved in the entire procedures which took place for five months plus after denial of a petition for review en banc. The ban of rehearing is fatal to justice, and due process.

The written opinion by the State Supreme Court Commissioner warrants the enclosure. His opinion mentions the word "impropriety" that the petitioner somehow thinks went on in the proceedings below.

Deceit and untruths in a court of law by the quasi judicial officers of the court and proven from the record can hardly be identified as mere improprieties. Appendix: B-2: Appendix: B-3: B-4: B-5: (Affidavits)

The commissioner also indicated no grounds were given by petitioner for relief under RAP 13.5(b)(2). The appeal-discretionary review clearly indicates the essence of review under that rule and the reasons for not being in freedom to act legally. To endure a premature mandate cutting off a right to ASK FOR REVIEW is limiting a party to act. To have vital letter-evidence and unable to penetrate the maze of the buffer zone rulings is limiting a party to act.

The Commissioner "denied" the discretionary review: Appendix A-13:

Appeal of that denial was made to the State Supreme Court and is attached in the entirety. Appendix A-13(a): The Supreme Court of Washington refused to modify the commissioner's ruling. Appendix A-14:

The absence of the original file from the appellate court was not docketed UNTIL AFTER DISCOVERY by petitioner that the files were missing out of the jurisdiction of the court. Appendix A-15(a): Appendix A-15(b):

A memorandum from a deputy of Federal District Court verifies the original files to be in the State Supreme Court. Appendix A-16:

September 10, 1979 discovery of entire original file #4916-I removed from the Court of Appeals Division I. The original file was out of the custody, protection and the jurisdiction of the appellate court 46 days.

The release of the original file was not docketed in appellate court UNTIL AFTER THE DISCOVERY by petitioner that the files were gone. Appendix A-17(a): Appendix A-17(b)

Special Accelerated Proceeding Motion submitted to Washington State Supreme Court to re-certify records. Three copies of the entire motion sent to the UNITED STATES SUPREME COURT. First 2 pages xeroxed and attached herein for identification purposes. Appendix A-18(a): Appendix A-18(b):

The motion states specifically page 2 the motion was to be ruled upon by the State Supreme Court Judges only. There was not to be any ruling by any commissioner or clerk of any court or anyone else but the HONORABLE JUDGES OF STATE SUPREME COURT.

Letter from Clerk of State of Washington State Supreme Court ruling no further action at this time. Appendix A-23: ANSWER: A-24:

JURISDICTION

JURISDICTION

Jurisdiction is conferred upon the United States Supreme Court pursuant to 28 U.S.C.A. 1257(3) and the Constitution of the United States as per the Appeal. Appendix A-15 (a)(b)

Rehearing Rule ROA I-50 has been repealed and this is repugnant to the Constitution of the United States State v Pudman 177 P 2d 376, 65 Ariz 197, and to the Washington State Constitution Art 4, §2 p 335.

There is a NEW ISSUE "Under color of law" directly related to certification of the original record to this appeal pursuant to 42 U.S.C.A. 1983-1984-1985 and 28 U.S.C.A. 1343 (1)(2)(3)(4)

In the event the United States Supreme Court does not consider appeal to be the proper mode of review, appellant/petitioner requests the papers upon which this appeal is taken to be regarded and acted upon as petition for certiorari pursuant to 28 U.S.C.A. 2103.

Nature Of Proceedings:

Chronological Summary pages 1 through 10 herein contains the dates and explanations of rulings, orders and decisions on appeal. This appeal began from a personal injury trial, and denial of motion for new trial or additur. Petitioner became pro se and discovered deceit and untruths proven from the record and reported.

The Court of Appeals upheld denial of new trial or additur. The petition for review was denied en banc sealing injustice in this state.

Rehearing rule repealed. A fruitless search began through motions and denials until July 20, 1979.

JURISDICTION (Cont'd)

New Issue For Jurisdiction:

The entire original file of records, papers, exhibits, Clerk's Papers, Briefs, Report of Proceedings, everything of #4916-I was released from the custody of the Court of Appeals Division I for 46 days in direct disregard of 28 U.S.C.A. Rule 1.

Appendix A-17(a)(b) proves the release of these original records was not even docketed until this petitioner discovered the entire original file was missing from the court.

The Appellate Court knew there was a pending appeal in the United States Supreme Court because a copy of the appeal was sent to them certified mail as soon as the appeal was filed August 7, 1979.

Appendix A-16 is a memo from the deputy of the Federal District Court which verified that petitioner's file and records were in the State Supreme Court.

He was given erroneous information. Protection was not given my original records in the State Supreme Court either. The entire file was sent to the Court of Appeals on July 25, 1979 - five days after the final decision. The original records in their entirety from 4916-I was in the hands of a civil action adversary seven days after the final decision in the State Supreme Court and were kept for 46 days. "Under color of law" is present.

JURISDICTION (Cont'd)

Appeal From Both Courts:

The jurisdiction of this appeal is from both the Washington State Court of Appeals Division I and the State Supreme Court because the denial of rehearing rule.

No rehearing necessitated Motions to submit imperative letter-evidence as a two-way proof of deceit of Error 3(a). The motions were all denied, review of motions denied, appeal denied, justice denied.

Standing: Controversy: Justicability: Cases:

The United States Supreme Court is being respectfully called upon to adjudge the legal rights of litigants in actual controversy. There is a personal interest in the outcome and the dispute does touch upon legal relations of the parties having the adverse interests.

Unfair Trial:

The complaining party has suffered permanent injury, has been denied a fair trial and no remedy or redress on appeal, there is humiliation, trauma and financial havoc of the extensive debts as the result of the injury, the result of the litigation, result of the unfair trial and the result of a futile appeal.

Is justice an endangered species?

The verdict of $4,600. for a dropfoot permanent injury and permanent cervical injury will NEVER be accepted by this petitioner. To partake in acceptance of a verdict obtained in deceit, untruths, misleading the jury, misrepresentation and suppression of fact, concealment, fraud of the court would make me a party to the wrongdoing and this will not be. It is public record since 1978 that I have refused this $4,600. and the reasons.

$145,000. is a "sensible award" for a drop foot injury says the Washington State Court of Appeals Division I - in Ryan V Westgard 12 Wash App 500 (1975). The very same Court of Appeals that upheld $4,600. for drop foot, cervical and other injuries for me. THAT DOES NOT MAKE SENSE.

The jury in the case at bar was so confused as to be "voting guilty or not guilty" in a defense admitted liability personal injury case. The Court of Appeals upheld the jury verdict.

The trial court did not know of the jury confusion, nor the criminal determination, nor the lies and deceit in his courtroom. But the pro se petitioner informed the Court of Appeals who had the power and authority to rectify the wrong and did nothing. Appendix B-1 Jury Foreman Affidavit

There was no mention in the decision of Washington State Court of Appeals Division I about their $145,000. upheld "sensible award" in Ryan v Westgard supra.

Justice Is The Reality Of Restitution:

A deceitful trial is a dead-letter-office for a fair trial. There is justicability and reason to come to the United States Supreme Court seeking help, because the State Courts have closed the door, sealed the door, then removed the door of remedy and redress for an unfair trial, leaving this petitioner abandoned on the doorstep of the Constitution of the United States minus her legal rights.

Injury:

The injury is denial of a fair trial, denial of just damages for permanent injuries, denial of Constitutional rights in a trauma-trial-of- trickery, there is injury in the futility of appeal and a decision porporting technicalities as law. The State Courts have incorrectly adjudged Federal Constitutional Rights.

There is injury in physical fact, and physical injury worsened from litigation stress, economic injury, aftermath and repercussions of injury in a "wrongful life." There is injury of financial obligations owed because of injury and appeals.

All injury traceable to defendant's negligent act and admitted liability in a personal injury action, followed by an unfair trial, then an appeal pro se with proven wrong from the record and the wrong upheld on appeal. A chasm of injustice unbridged and no remedy.

"Standing" From Those Who Know:

People who loan the money for medical expenses and litigation know the standing.

The medical persons who have treated this petitioner for her injuries, and given repeated medical tests to prove the injury, know the injuries and the standing. Doctor's Affidavit Appendix B-7: Injury from fall: Appendix B-8:

Psychiatrist request for new trial and a character reference from former member of the Mayor's Office Seattle - now retired. Mr. Keene Appendix A-22:

Petitioners family lives with the standing.

Those strangers and acquaintances know the standing from the sight of crippledness.

The unkindly know the standing when they will not tolerate slowness of petitioner, thus shutting the doors of buildings, elevators, busses, preventing her from entering. They are too impatient to wait, too unkind to tolerate. Rejection is standing.

A passenger in a passing car described the standing when he called out the window to the petitioner: "Hey you old cripple, you'd be better off dead." Appendix B-9:

God Knows The Standing.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

JURISDICTION: ARTICLE III CONSTITUTION OF THE UNITED STATES §2, Cl. 1, Note 17 p 76

"United States Supreme Court must take notice on its own motion where jurisdiction does not appear.

Butler v Dexter, Tex 1976, 96 S. Ct. 1527, 425 U. S. 262, 47 L Ed 2d 774

JURISDICTION: ARTICLE III CONSTITUTION OF THE UNITED STATES §1 Note 121 p 12

"Policy of federal courts is to decide cases on basis of substantial rights rather than technicalities."

Hines v Wainwright, C. A. Fla 1976 539 F 2d 433

JURISDICTION: USCA AMENDMENT 1:

"Standing should be found whenever a plaintiff is faced with a choice of either asserting a Constitutional claim or complying with and abetting a discriminatory policy."

Wilson v Chancellor 418 F Supp 1358

JURISDICTION: CONSTITUTION OF THE UNITED STATES ANNOTATED AMENDMENT 14 Note 480 p 394

"Right to action by one injured as result of negligence of another against the negligent party to recover damages sustained by reason of such injury is "property" within protection of this amendment." Martinez v Fox Valley Bus Lines D. C. Ill. 1930 17 F Supp 576

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES ANNOTATED ARTICLE 3 §2, cl 1, Note 28 p 226 Conduct Of Trial:

"Where particular mode of trial being used by many judges is so cumbersome, confusing and time-consuming that it places completely unnecessary obstacles in paths of litigants seeking justice."

Fitzgerald v U. S. Lines Co. N. Y. (1963) 83 S. Ct. 1646, 374 U. S. 16, 10 L Ed 2d 720 Rehearing Denied 84 S. Ct. 26 375 U. S. 870, 11 L Ed 2d 90

CONSTITUTION OF THE UNITED STATES ANNOTATED ARTICLE 3 §1, Note 121 Respondibility of the Judiciary:

"Policy of federal courts is to decide cases on the basis of substantive rights rather than technicalities."

Hines v Wainwright C. A. Fla (1976) 539 F 2d 433

BECAUSE OF THE REPEAL OF THE REHEARING IN STATE SUPREME COURT AND THE SEARCH TO BE HEARD IN MOTIONS WAS UNSUCCESSFUL, THIS APPEAL MUST BE TAKEN FROM BOTH THE COURT OF APPEALS DIVISION I AND THE STATE SUPREME COURT OF THE STATE OF WASHINGTON.

QUESTIONS PRESENTED

QUESTIONS PRESENTED

I

WHETHER THERE IS DENIAL OF DUE PROCESS OF LAW IN DENIAL OF FAIR TRIAL AND DENIAL OF THE "DAY IN COURT" BOTH IN TRIAL COURT AND IN THE ATTEMPTED REHEARING, AND DENIAL OF REDRESS AND REMEDY FOR WRONGS COMMITTED IN THE TRIAL AND APPELLATE STRUCTURE COURTS OF THE STATE OF WASHINGTON, DENIAL OF CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND EQUAL PROTECTION IN EQUAL CIRCUMSTANCES AND WHETHER THERE IS TRANSGRESSION AND TRESPASS UPON THE STATE CONSTITUTION AND THE UNITED STATES CONSTITUTION PROTECTION FOR EVERY CITIZEN THEREIN WHEN THE FACTS ARE:

Deceit and wrongful acts in the trial, lack of diligent investigation by the judge, the confused jury as per jury foreman affidavit Appendix B-1, inadequate damages of $4,600. for permanent drop foot injury and permanent cervical injury, denial of new trial or additur by judge who did not investigate and thus did not know of deceit in his courtroom, the decision of "Affirmed" by the Court of Appeals Div I, ignoring their own ruling that $145,000. is a "sensible award" for a drop foot and in conflict with that ruling upholding $4.600. for a drop foot injury to this petitioner plus other, and using the technicalities, inaccuracies, misunderstandings as proven in Statement of the Case PART II herein, denial of petition for review en banc, repeal of the "rehearing Rule ROA I-50 and the Appendix A-7 letter stating "No Rehearing - No Reconsideration", thus leaving no way to submit an evidence-letter except in desperation pleas and motions and appeals from petitioner from February 9, 1979 until July 20, 1979 and the final ruling is by a COMMISSIONER and modification denied.

QUESTIONS PRESENTED (CONT'D)

II

WHETHER released "under color of law" original files, records, papers, exhibits on appeal #4916-I, out of the jurisdiction of the Court of Appeals for 46 days, is a NEW ISSUE before the Supreme Court which has need of these files certified if jurisdiction is accepted?

HOW could the original records be certified if the records are out of the custody of the court, and the certification presumes the files have been in the custody and control of the State Appellate Structure since they were filed?

WHETHER the release of the original files out of the custody of state appellate courts, constitutes a connecting-injustice extending from the state courts of Washington to the United States Supreme Court because there is a pending appeal in progress?

WHETHER loopholes of technicalities will be used in the State of Washington higher courts in answering for the "under color of law" injustice of releasing original files which are constitutionally prohibited in: 42 U.S.C.A. 1983: 42 U.S.C.A. 1984: 42 U.S.C.A. 1985: 28 U.S.C.A. 1343 (1)(2)(3)(4): 28 U.S.C.A. 1738: 28 U.S.C.A. Rule 1?

WHETHER the removing of the files from the COURT OF APPEALS DIVISION I is an attempt to deviate the cause of action?

QUESTIONS PRESENTED (CONT'D)

III

WHETHER affirmation in the Court of Appeals of the denial of new trial or in the alternative additur CR 59 is abuse of discretion affirming abuse of discretion of the trial court when the Appellate Court knows the facts of deceit and wrong, and the utter confusion of a jury?

WHETHER there is abuse of discretion on appeal to deny constitutional protection of a fair trial when the appellate court is made aware the judge of trial court was not aware of the wrong in his courtroom but he did not investigate?

WHETHER there is abuse of discretion on appeal to be in conflict with the appellate court's own ruling that $145,000. is a sensible award for a drop foot injury in 12 Wash App 500 (1975) while upholding a deceitful trial, a confused jury, and a $4,600. for a drop foot injury plus other injuries?

WHETHER there is denial of a constitutional right to "day in court" because the rehearing is repealed in Rule ROA I-50 in denial of due process to be heard?

WHETHER the entire decision of the Court of Appeals Division I in the Statement of the Case PART II indicates lack of constitutional rules to application in the facts?

WHETHER the court of appeals decision bypassing rules and laws and citations and authorities and precedents and conflict rulings, are replaced with technicalities as an excuse to "Affirm" a wrongful-unconstitutional-trial, immersed in deceit repugnant not only to the constitution but also to the people the constitution protects?

III

WHETHER issuance of mandate within 24 hours of notification of denial of a motion estopped due process of law in cutting off the right to ask for review of a denial of a motion?

WHETHER any citizen should have to be put in the position of desperation trying to be heard in appeal having imperative letter-evidence regarding deceit in Error 3(A) and the avenue of presentation, the rehearing, is repealed?

WHETHER the constitution will allow the repeal of a rehearing causing disregard of rights to be heard thus repugnant to the purpose of the Constitution of the United States?

WHETHER a Constitutional question presented in motions because the rehearing has been deleted, is improperly ruled upon by a Commissioner when the motion asks specifically for en banc since the original error was so ruled upon?

WHETHER justice could be done under the law when the extra-ordinary powers and rules provided for that purpose to fit any circumstance of injustice, were never used?

WHETHER the procedures used to restrain the vital evidence-letter first paragraph from ever reaching the Supreme Court Judges included the disappearance of a motion to recall the mandate?

III (Cont'd)

**** The rehearing repealed is responsible for the entire proceedings from February 9 through July 20, 1979. Had there been a rehearing in this state, the letter-evidence would have reached the supreme court en banc and been properly ruled upon. Instead of that, the evidence never reached the judges for a ruling and the petitioner is denied the right to be heard. And a Commissioner decides.

WHETHER there was constitutional reason for redress and remedy with inadequate damages and an unfair trial and a jury confused to a low point of comprehending if the jurors must determine the guilt or innocence of a victim?

WHETHER proven deceit from the record in a trial, proven untruths from the record to the judge and jury and litigants, misleading the jury and the court, confusion of the trial and the jury, misrepresentation and suppression of fact, fraudulant concealment, fraud of the court to be disregarded by the Court of Appeals and the State Supreme Court, can be allowed to remain as representing a "government of the people, by the people, for the people."?

WHETHER the victim is to be penalized for wrongful acts of others in trial and no relief on appeal?

WHETHER all adverse judgments and rulings on appeal in the appellate structure of the State of Washington can stand the scrutiny of federal examination?

QUESTIONS PRESENTED (CONT'D)

IV

Question: When there is the liar of the fact, where does that leave the trier of the fact?

Question: The principle function of a trial is to arrive at the truth. How can the truth be obtained if the protectors of the truth, the attorneys, allow deceit and untruth into the trial proceedings and the judge does not diligently investigate but trusts the quasi judicial officers of the court implicitly?

Question: Can a jury verdict be presumed correct and inviolate under the law when a trial is proven deceitful and the jury is proven confused?

Question: What impression goes to a jury of the importance of the trial when a judge announces delay of the trial to give a luncheon talk?

Question: Would the upcoming election of a judge take precedent importance unknowingly in the judge's mind to warrant delay while the judge attended a luncheon to give a talk?

Question: If this is the intention of the judge to give a talk at a luncheon, would it not be abuse of discretion to so announce to a jury such an intention which would cause a prejudicial thought the trial was not so important as a luncheon talk?

QUESTIONS PRESENTED (CONT'D)

IV

Question: Does it not indicate substantial justice was not done in petitioner's trial when the judge of trial court stated he would have awarded a far greater SUBSTANTIAL verdict?

Question: The denial of new trial or in the alternative additur was by a judge who did not diligently investigate the wrongs that happened in his courtroom. Under that circumstance, compiled with the underhanded factors in the proceedings, would this lack of investigation not have a bearing upon abuse of discretion in denying not only new trial or additur but justice as well?

Question: Can professional trust of a judge for an attorney be a form of abuse of discretion? Must the judge in trial court separate his trust of the profession from the diligence of investigating even those whom he trusts?

Question: If the lawyers do not conduct the trial in a manner befitting their Honorable Profession, who will?

Question: Does not a lawyer owe a duty of fidelity to his profession and in so doing, a duty to protect the public and a fair trial?

Question: Shall the victim of injuries be penalized for a proven unfair, deceitful trial?

IV

Question: Why is the public losing respect for the courts?

Question: The trial judge denied a motion and then said to the attorneys: "I don't know how this case operated. It looks to me it was very informally handled between counsel, you know each other and so forth."

Would it not be correct to determine that when a judge admits there is confusion in the trial, and speaks to the attorneys in the above manner, and from the record is unsure, disagrees with the verdict and would have awarded a far greater substantial damage award to petitioner, expresses doubt and hesitancy in his rulings, this would warrant diligent-diligent investigation throughout the trial?

Question: Why would the defense attorney ask for a continuance 18 days before a scheduled trial with the reason as "conflict of trial dates"? Would not the "conflicting" trial be the other trial in conflict with petitioner's trial already set and only 18 days away? App. A-20

Question: What injustice to be the victim of injuries, unfair trial and appeal, and even deliberate delays. Deceit. Could the purpose of this continuance be anything other than delay when the "conflict of trial dates" is proven to be a MOTION???

The accident June 4, 1971.
False Continuance as above 1974.
Mistrial on false premise 1975.
Deceitful, unfair trial 1976.

IV

Question: Why would the defense attorney question the plaintiff Beatrice Koker only 11 lines in the proceedings cross-examination?

Question: Does the rule of proof and the common sense rule carry the weight and preponderance of medical evidence when plaintiff has medical doctors with 25 years and more experience who tested, and retested, and proved the injuries over an extended period of 4½ and 5 years, and a psychiatrist for 15 hours before trial - - - in opposition to the defense medical of 2 doctors examining plaintiff briefly once each, one 4½ years before trial and never saw nor heard of plaintiff again, and one doctor witness 2 days before trial?

Question: Why would the defense doctor who saw plaintiff briefly 4 ½ years before trial evade questions from his own deposition while testifying in trial?

Question: Is not the testimony of the treating physician and specialist who has seen the patient a number of times during an extended period of time FAVORED over that of a physician who has seen the patient only briefly in determination of damages?

QUESTION: Is an injured victim of permanent injuries entitled to treatment of her misery? Is relief of pain necessary?

Question: What kind of medical evidence does a defense have that a plaintiff is sent to a defense medical doctor 2 days before trial when they had five years?

IV

Question: Why were the EMG reports proving the injuries never submitted to the jury in treating doctor testimony or exhibit?

Question: Why was not the treating doctor asked for proof of the drop foot injury? When the deposition holds answers to key questions never asked in court, why is not the treating doctor's deposition not opened and published wherein the key questions ARE ANSWERED?

Question: The defense attorney introduced medical reports of non-testifying doctors into the cross examination of the treating doctor and the judge made a "thin line" ruling in which he allowed the reports "not for the truth or untruth" for the plaintiff doctors only. There is a conflict case in Statement of the Case II which proves this an erroneous ruling and therefore abuse of discretion. The medical reports are 2 to 4½ years old predating the proof of injury and all examinations were superficial.

If the defense attorney was so sure of the non-testifying doctors that he wanted to present their medical reports in court, why not have the defense doctors there to testify as well as the plaintiff doctors? Why substitute elderly medical reports 2 to 4½ years old, predating the proof of injury, and why was not the jury told???

IV

Question: Why would a defense doctor examine plaintiff and find a blood pressure reading of: 210/0(zero) on the right arm and 210/70 on the left arm and NOT TELL THE PETITIONER PLAINTIFF ANYTHING ABOUT BLOOD PRESSURE - HIGH, LOW OR OTHERWISE!?

Question: What purpose of justice is served with medical reports in proceedings brought up in cross-examination predating the injury and no doctors to cross-examine?

Question: Why would the medical reports be "not for the truth or untruth" for plaintiff doctors and allowed to be considered "reliable" by a defense doctor in a double standard?

Question: Whether a medical report because of the very nature of its purpose, pertinent because of its truth, thus it cannot be pertinent to any issue in the case REGARDLESS of its truth?

Question: Whether there is prejudicial danger in allowing anything medical into the trial without the right to cross-examine in a personal injury case?

Question: Can a double standard be fair in any circumstance? Why would a judge allow the defense attorney to use two medical reports and restrict the plaintiff attorney to one of those medical reports in the same circumstance?

IV

Question: How could a judge who states in the record he is very strict about discovery rules, allow medical reports of non-testifying doctors with no chance for cross-examination?

Question: Is prejudice contagious?

Question: When a doctor changes his medical report in a deposition, is it not deceit to read the original medical report as bonafide?

Question: Why would the defense attorney deceitfully ignore the changed medical report and read the original medical report misleading the jury and the court and falsifying facts?

Question: A mistrial was called over this same doctor in 1975 saying falsely the doctor "refused" to testify. Then why isn't this doctor called to testify in the 1976 trial with testimony important enough to cancel a trial the year before? Would that not indicate the mistrial as an excuse for delay?

Question: Is there not a clue for the judge to investigate when this same doctor's name is mentioned 58 times the first two days of trial and the doctor is not called to testify?

Question: What prompted the counsel in this unfair trial to subject the court and the legal profession and themselves to such jeopardy and risk of public ridicule and disrespect?

IV

Question: Whether it is not prejudical for the defense attorney to ask personal promises to himself from the jury saying he realized he had asked difficult promises but at the end of the trial it was their job to keep those promises to the defense attorney?

Question: Whether the strong efforts to take the voir dire examination from the attorneys and give to the judges because this questioning is abused, is a factor in the confusion of this trial in the case at bar?

Question: Whether when prejudice is the most guarded-against aspect of a trial by a judge when he investigates, would the letters written by plaintiff to her treating doctor being left in view of the jurors for hours and then removed without informing the jury as to who, what when, where, how or why of the matter is prejudicial confusion of the jury and contributing to the unfairness of the trial?

Question: Whether when an attorney asks for a list from his client of information to expedite matters timewise at the deposition, that list would be allowed as an exhibit in a trial?

Question: Whether a jury is prejudiced by explanation of 25% of the list reading from the deposition, leaving 75% unexplained giving the jury the "gibberish notes" a memo of reminders out of context and no explanation and usurping an attorney's work product as an exhibit?

IV

Question: Why would the 2-day-before-trial medical defense witness have to be vouched for?

Question: Is not the compounding of insinuating questions, attacking the memory of a witness when memory is not involved, bringing up a marriage of 30 years before that ended in divorce, a deliberate attempt to put before the jury improper matters of prejudice not related to the injuries or circumstances of the trial?

Question: Does not the ligiant have the right to offer testimony which reasonable tends to support his or her own theory of the case while disproving the theory of the adversary?

Question: When a judge denies a lay witness to plaintiff in her burden of proof without prior notice, and there are precedent cases prohibiting this, is that not abuse of discretion?

Question: Would not the nature of a nerve injury demand a bevy of witness to the "before" and "after"?

Another lie was discovered recently regarding the information given to the judge in trial court that the plaintiff attorney did not know of this third lay witness until the night before trial what she would say, what she knew about it. Not true. Petitioner found carbon copies of letters written to her attorney in 1975 and 1976 informing him. There is also a witness.

IV

Question: How could a medical bill of $2,839. be identified as Ex 1 in trial and NEVER ADMITTED, if this were not the reported confused trial?

Question: How is it possible to object to a formula pattern instruction when both attorneys submitted the same instruction erroneously word for word?

Question: Does a miscarriage of justice to this petitioner also demand penalties for lack of objections in trial?

Question: Would proven misstatement of fact, misstatement of testimony, maligning doctors, and witnesses, deceit, misrepresentation and suppression of fact, misleading the jury, concealment, untruths and all proven wrongs from the record ever be considered by anyone a fair trial??

Question: Would a confused jury have the capacity understand admonitions of the court regarding instructions and other? Appellant's Civil Appeal August 1976 said: Page 2/1-2-3:

"There is no evidence or reasonable inference from the evidence to justify the verdict of $4,600. and that is contrary to law. JUDGE'S INSTRUCTIONS NOT FOLLOWED."

QUESTIONS PRESENTED (CONT'D)

IV

Question: Whether the unfair trial, the circumstances causing the unfair trial in the case at bar will have jurisdiction in the United States Supreme Court on both Federal and Non-Federal Grounds?

Questions: Is the public interest in fair trial doomed to outrage when wrongful acts causing an unfair trial are upheld on appeal?

Question: What could be more public interest than guarantee of a fair trial, when a trial is a possibility in one way or another that could be personally or knowledge of another?

Question: Is there equal protection and redress and remedy on appeal when the Court of Appeals Division I has ruled in conflict to itself in a former ruling on damages for the same injury?

Question: Will Statement of the Case PART II prove that to "Affirm" the trial of errors herein, is in error and conflict to the Constitutional provision for restitution?

Question: When the Court of Appeals Division I, knows the jury foreman affidavit is given to prove the confusion of the jury, and all papers indicate that confusion submitted on appeal, why would an improper citation be used to disregard that important affidavit?

STATEMENT OF THE CASE

The length of the Statement of the case is due to the complexity of injustice, the length of the trial the length of the appeal and the span of 8½ years since the wreck.

There is a factor of being pro se trying to desegregate personal hurts into objectivity.

A Jurisdictional Statement to the United States Supreme Court is a desperate effort.

All finances to appeals are borrowed. The expense of double-xeroxing the decision of the Court of Appeals is a financial hardship.

The need for the decision opinion is imperative in the Statement of the Case to prove the inaccuracies and misunderstandings.

The Statement of the Case is in four parts: PART I is regarding facts in Chronological Summary: PART II is the errors of trial court and Decision on appeal. PART III Rehearing ROA I-50 is repealed. PART IV NEW ISSUE Original records and files were released from protection custody of the Court of Appeals Div I.

(STATEMENT OF THE CASE)

PART I:

The Chronological Summary Explanation pages 5 through 10 demonstrates the "entourage of denial" in trial court, state Appellate Court, and state Supreme Court in this case. There was a jury award in damages of $4,600. for permanent drop foot injury and permanent cervical injury. Treating Doctor Affidavit Appendix A-7:

The very Appellate Court that upheld an unfair trial and the inadequate damage award of $4,600. for drop foot injury, found $145,000. as a "sensible award" for drop foot injury in RYAN v WESTGARD 12 Wash App 500 (1975)

Deceit:

In the petitioner's trial, there was deceit, untruths, misrepresentation of fact, and suppression of fact, concealment, misleading the jury, fraud of the court, and other. All this found and proven from the record pro se AFTER trial. Reported on the appeal in assignments of error and new issues for review, briefs, etc.

Delay:

Proof from the record of fraudulant delay through a continuance in which the defense attorney states he has a conflict of trial dates, 18 days before a scheduled trial. The continuance is granted in good faith by the commissioner judge on the word of the attorney, only for this pro se to find the defense attorney in record appearing in a MOTION on that day. Appendix A-20:

Cont'd

Duty Of Trial Court To Investigate:

The trial court judge abused discretion throughout the trial in rulings because he DID NOT diligently investigate. The trial court judge abused discretion when he trusted the court's officers without question. The attorneys who had sworn to uphold the law of the land and dignity of the court - did not.

There should not ever be cause for any judge to mistrust the quasi judicial officers of the court. Yet it is the duty of the judge to diligently investigate facts BEFORE RULING.

Investigation by the judge would have uncovered wrongdoing and changed the course of injustice. As an example: The judge is shocked to find the span of time between a mistrial 1975 and the trial in the case at bar 1976. RP VOL I p 4/22-25: Alert #1:

The Court: "When was the trial?"
Attorney: "January or February '75."
The Court: (Shocked) "A year and a half ago, oh, good grief."

Alert #2: The defense attorney tells the trial judge the mistrial 1975 was caused from the refusal of plaintiff attorney to allow use of a doctor's medical report and that the doctor refused to testify, and so when a juror became ill the second day of trial, the defense attorney refused to go on with 11 jurors. RP VOL I p 5/3-11:

Duty To Investigate: (Cont'd)

Alert #3: The judge now knows of a doctor important enough to cause a mistrial. That doctor's name is mentioned 58 times the first 2 days of trial 1976, and intermittently throughout the trial.

Opening Brief p 31:

Dr. Sata's Name Mentioned:

RP VOL I p 4/16; p 5/4; p 5/10; p 5/15; p 5/16; p 11/2; p 66/1; p 66/21; p 66/22; p 66/25; p 67/6; p 67/11; p 67/14; p 68/12; p 68/17; p 68/20; p 68/25; p 69/9; p 69/23; p 69/25; p 70/5; p 70/6; p 71/8; p 71/23; p 72/1; p 73/ 13; p 73/18; p 82/19:

28 times

RP VOL II p 121/22; p 122/4; p 129/19; p 129/21; p 129/25; p 130/18; p 130/21; p 130/22; p 130/23; p 130/24; p 136/16; p 136/21; p 137/22; p 138/4; 132/8; p 132/9; p 132/17; p 132/25; p 164/15; p 133/11; p 133/15; p 158/21; p 162/1; p 164/8; p 164/20; p 164/23; p 165/1; p 165/12; p 166/5; p 166/7;

30 times

Alert #4: The trial court judge is told there is a deposition of this doctor taken by the defense attorney. RP VOL I p 11/1-4:

Cont'd

Alert #5: The medical reports of Dr. Sata, this important doctor, predated the deposition by 1 and 1½ years. THE MEDICAL REPORTS WERE USED IN THE PROCEEDINGS AND THE DEPOSITION WAS MISSING ENTIRELY.

Alert #6: Neither the defense attorney nor the plaintiff attorney called Dr. Sata to testify at the trial of 1976!

There is abuse of discretion by the trial court judge not to have investigated the six alerts. Why was there a year and a half between a mistrial and another trial? What importance does a doctor have to warrant a mistrial because his medical report was not used? Why the frequent mention of this doctor's name? Where is the deposition? What is in it? Would not the deposition be more recent for information and be a substitute testimony in case a doctor does not testify? WHY IS THE DOCTOR NOT CALLED TO TESTIFY IF HE IS THAT IMPORTANT?

The judge should have had suspicion for investigation of the "why" when he had six alerts to do so.

IF The Trial Court Judge Had Investigated:

He Would Have Found:

(a) The deposition of Dr. Sata was never transcribed.

Cont'd

Investigated
Trial Court Judge Would Have Found:

(b) Dr. Sata DID NOT refuse to testify in the 1975 trial. The defense attorney knew he did not refuse from the deposition testimony the defense attorney took himself. The trial court judge was told an untruth in court.

(c) Dr. Sata changed his medical report in the same deposition.

(d) The defense attorney used the ORIGINAL medical report in court, the medical report portrayed as bonafide and unchanged.

(e) The plaintiff attorney had a duty to speak and inform the court of deceit, and the plaintiff attorney remained s-i-l-e-n-t.

THE PROOF:

Appendix A-21 is a memo in Dr. Sata's own handwriting which, deciphered, says:

2/7/75 A. Sola called - - I don't do EMG

2/12/75 2 phone calls be court appearance - - I can't. LeMaster atty for defense Atty betts denies my deposition or letters to be introduced. I can testify right after week-end. Could today exc post holiday.

Cont'd

THE PROOF: (Cont'd)

Dr. Sata changed his medical report in the deposition. The doctor also settled therein the matter of not appearing in the 1975 trial. The memo in his files says the doctor would testify RIGHT AFTER THE WEEKEND which was still a trial day! Was a mistrial called for the purpose of delay?

Dr. Sata Deposition: p 25/23-25: p 26/1-5:

Re: Changed medical report.
Re: Not appearing in court.

Dr. Sata: " - - I am simply trying to clarify my thoughts regarding this patient. I have no axe to grind and I don't feel that I have to be held to any report that I have submitted if I don't think this is proper at this time.

One more thing, this matter of not appearing in court, this is all news to me. Could we go off the record? I want to get this settled."

Off the record.

The Vigil Absent:

There cannot be a fair trial when the attorneys are untruthful to the judge, jury and litigants. There is abuse of discretion when the trial court investigation-vigil is absent.

Web Of Deceit:

Investigation by the trial court would have prevented his "thin line" ruling in allowing medical reports 2 to 4½ years old of non-testifying doctors into the record.

This ruling involves the medical report CHANGED in a deposition and that fact concealed from the jury, court and litigants and all other doctors both plaintiff and defense.

The medical reports of non-testifying doctors PREDATED PROOF OF INJURY. The jury was not told. The judge was not told. I was not told. Petitioner did not have medical reports or depositions until AFTER trial pro se.

A web of deceit permeated the entire trial. Investigation by the trial judge would have been discovery of why any attorney would submit elderly medical reports instead of calling the doctor to testify.

The trial judge not investigating the actions and omissions in court is in conflict with his own belief on discovery of facts. RP VOL II p 92/15-18:

> The Court: Well, the purpose of discovery rules obviously is to advise people of what they are going to face. I feel very strongly about discovery rules."

Cont'd

Web Of Deceit: (Cont'd)

Yet this judge allows what he calls a "thin line" ruling making it possible for medical reports of non-testifying doctors read in court, with no cross-examination possible, and no discovery of this happening for the plaintiff to know what had to be faced.

In so ruling, and in so not-investigating the web of deceit flourished into an unfair prejudicial and jury-confused trial.

A Troubled Judge:

The trial court judge was troubled and unhappy and dissatisfied with the jury verdict. The judge sensed something was wrong but did not investigate.

RP VOL V p 471/20-25: Honorable Judge Speaking

> "Well, this is a very troubling case, and it raises the question of how - - and these cases all do - - how far a trial judge should inject himself or herself into the deliberation of a jury. Had I been the trier of fact, the Kokers would have had a SUBSTANTIALLY GREATER VERDICT."

The judge of the trial court assumed the jury was not confused and the judge did not know the extent of their confusion and he did not investigate so he did not know the deceit and untruths and wrongdoing in his own court.

A Troubled Judge: (Cont'd)

RP VOL V p 473/16-17-22-23-24:

Honorable Judge Speaking Denial Motion New Trial or Alternative Additur:

> "I believe this is a very close question, and I'm sure counsel looking at me, knows that I feel this way. I guess I have to say my jurisprudential views in this case override my personal views. I don't like the verdict, but I think that under the law, I should not superimpose my own personal views . ."

The assignment of errors and the new issues for review and the appeal, all reveal the deceit and wrongful acts in trial. The jury was so confused it took the jury foreman approximately 2 hours to CONVINCE the jurors the petitioner-victim was "not guilty." This was a personal injury, damages only trial.

The judge did not know any of this when he denied the motion for new trial or additur. He is troubled. He does not like the verdict. It is a close case, even with the deceit. Therefore WITHOUT THE DECBIT, the verdict would have been obvious to the jury and the damages they would then have awarded would have been just and fair and therefore adequate.

Jury Foreman Affidavit proving confusion of the jury and the extent of confusion. Appendix B-1

Cont'd

Honorable Judge:

It is my contention that even the judge was confused and misled by the concealed misconduct and deceit and untruths in the trial of the case at bar.

The judge had utmost trust in the attorneys of that trial which caused abuse of discretion by inattention to investigation. This judge is an honored judge and I respect him.

This judge of trial court protected me from my own attorney in the proceedings. The defense attorney asked petitioner a question regarding visual handicap problem of daughter and her difficulty getting to school.

After the accident, I could no longer drive her to school because of the dropfoot and other injuries. Her father was working 15 hours a day to financially survive the pressures of the expenses of the wreck, and her visual problem.

The daughter and her father would go on the bus system so she could learn to travel the Seattle Bus System with her handicap.

My answer came to the defense attorney's question, and my own attorney interrupted and chastised me, saying: "The question Mrs. Koker." The judge of trial court intercepted the chastisement and said: "She understood the question." RP VOL III p 329/1-4:

Priority:

At the time of petitioner's trial, the trial court Judge was in a political arena for his reelection. The report of proceedings reveal his activities in some respect.

June 10, 1976: Time: Approaching 12 noon:

RP VOL III p 288/7-11: The Court Says:

> "We're going to recess now until 2 o'clock, not 1:30. I have an obligation - a talk over at the East King County Bar Association in Bellevue, and I know that they finish at 1:30. There's no way I'm going to be back before that time, so you get a little longer lunch."

The implication being that a judge considers a luncheon talk more obligation than a trial, so how important does that make the trial?

> "Jurors are quick to observe attitude of court toward litigants and their counsel, whether favorable or unfavorable, and to be influenced thereby." Hays v Viscome 264 P 2d 173 Headnote (8) Wests Key 29(4)

The trial was in summer. The judge was not reelected in the fall.

(I voted for him.)

Repugnancy Of Injustice On Appeal:

The trial court was incognizant of the deceit and wrongdoing and unfair trial in his courtroom because the judge did not diligently investigate. Instead the judge of trial court implicitly trusted the quasi judicial officers of the court who in turn betrayed his trust.

The troubled trial court judge denied the motion for new trial or additur never knowing what had happened in his own courtroom.

The facts would still be buried if a litigant-petitioner had not become pro se, also troubled that thousands of dollars more than the inadequate verdict had been borrowed just to survive the expenses of the wreck.

The trial was over, the motion denied June 1976. Plaintiff attorney abandoned her and refused to appeal.

Trauma:

In the process of being honest to the appellate court with everything out in the open, deceit was discovered. The shock of betrayal, the disbelief, the disillusionment to discovery of wrongdoing in the trial by those you trust most - the attorneys - is a trauma in itself.

Pro se petitioner presented proof from the record to the Court of Appeals Division I. The appellate court who KNEW the trial court

(Cont'd)

Trauma: (Cont'd)

DID NOT KNOW of the confused jury and the wrong in a court of law. Instead of rectifying a wrong, the Court of Appeals Division I AFFIRMED the trial court denial of motion for new trial or additur. The appellate court denied the plea for reconsideration.

The state supreme court then denied the petition for review en banc, upholding the trial court trusting the attorneys and not investigating and allowed the rulings made on that premise. On appeal those facts should have nullified the denial of new trial and set aside the verdict of a confused jury misled by deceit with the sanctity and purpose for a jury exploited.

No extra-ordinary powers possessed by the higher state courts were ever used for justice of the case. There are conflict cases and evidence the court rules were not followed in decision on appeal.

The higher state courts in their denial of petitioner's appeal have protected the wrongdoers and condoned the wrongdoing in a court of law in a trial protected under the Constitution of the United States to be "fairly and fully heard in a meaningful way."

Is deceit in a trial fair? Meaningful? Can misrepresentation and suppression of facts and concealment present a fully heard trial?

The End:

Petitioner sent intention to file for rehearing and verification of the filing date. The answer was notification that ROA I-50 is repealed and there is no rehearing. Appendix A-7:

To remove a rehearing in appeal is to deny the last remnant of the "day in court" denying therein a constitutional right.

There were two reasons for wanting a rehearing, (1) reconsideration of the entire appeal, (2) by sheer chance, an evidence-letter was found after denial of petition for review and this letter was imperative because it would disallow any technicality to stand. This letter was evidence the petitioners did not know the contents of the doctor's deposition at the time of trial. The deceit of Error 3(a) would be a reversal.

No rehearing. Denial of due process is an emotional abyss of "nowhere to go" rejection, cast aside, discarded.

There ensued motions and denials from February 1979 until the final ruling July 20, 1979. Appendix A-8: A-9: A-10: A-11: A-12: Appendix A-12(a): A-12(b) A-13: A-13(a):

The finality Appendix A-14

The End: (Cont'd)

The ruling on Error 3(a) in petition for review was en banc. Therefore, the letter-evidence of deceit pertaining to Error 3(a) was put in motion to be heard en banc.

The clerks of the appellate and state supreme court and the commissioner of the state supreme court intercepted the letter-evidence in their rulings. The letter-evidence was denied by the judges of the appellate court, and the letter-evidence never got en banc to the state supreme court.

An appeal to the United States Supreme Court was filed August 7, 1979, with request for certification of the record on appeal.

New Issue: Release Of Original Record File:

The new issue herein is an "under color of law" release of an entire original record file of my state court appeal #4916-I.

The Court of Appeals was sent certified mail a copy of the appeal to the United States Supreme Court the day after filing.

There is also a pending civil action in superior court based with evidentiary pleadings to the Report of Proceedings Trial 1976 in the appeal original records. Petitioner borrowed nearly $1200. to have those proceedings transcribed.

New Issue: Release Of Original Record (Cont'd)

A motion of Special Accelerated Proceedings was submitted to the State Supreme Court October 1, 1979 to re-certify the original file. (Copy sent to United States Supreme Court)

The motion asks to recertify the original file and asks for sanctions and terms for the responsible.

The original file had been long-gone from the State Supreme Court - since 5 days after the final ruling July 20, 1979. This information not discovered by petitioner until September 10, 1979.

There is a memo indicating the clerk of the supreme court of the state had not protected the papers in that he did not even know they were gone from his court. Yet without looking, without checking, without investigation, that clerk told both the petitioner and the deputy clerk of the Federal District Court that the papers and files and records were in the State Supreme Court. Appendix A-16: Memo from deputy.

The entire original file was released for 46 days out of the jurisdiction and custody of the Court of Appeals Division I and the entry of the entire file release was not entered until September 10, 1979 AFTER DISCOVERY by the petitioner that the file was gone.

New Issue: Release Of Original Record (Cont'd)

In addition, the attorney-litigant who obtained the release of the files on appeal for 46 days has been an attorney for over 40 years and well knows the rules of the court in regard to original files and records.

My request as pro se, to return the entire file was answered by granting 12 days extension of time to keep the original records out of the custody of the Court of Appeals Division I.

Petitioner again asked for the return of the original record in demanding terms, voicing constitutional references and then the file was returned and is now in the state supreme court.

The ruling to re-certify the original records was asked for en banc. The clerk of the state supreme court filed the motion, then set the motion aside without further action at this time presuming the Jurisdictional Statement will not be accepted herein.

In "shelving" the Special Accelerated Proceedings Motion, the clerk of the state supreme court did not even consider the pending civil action and the report of proceedings needed in an evidentiary complaint based on the entire report of proceedings. Appendix A-23:

The clerk of the supreme court did not consider his decision is in conflict of interest because in setting aside the motion, the terms and sanctions of which he is a recipient have also been set aside in his own protection.

Way Federal Questions Were Raised And Passed:

The Federal Question #1 "fair trial" was raised in trial court in motion for new trial or in the alternative additur which is a ruling on "fair trial" under CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9) RP VOL 5. Quotations from the record under "Troubled Judge" herein.

Federal Question #1 "fair trial" was raised in appellate court by the appeal of denial of motion for new trial or in the alternative additur, and inadequate damages, plus new issues, and assignment of errors. This federal question ruled upon by the appellate court by affirming the trial court denial of motion for new trial, and also stating in decision. (PART II)

Federal Question #1 "fair trial" was ruled upon by the state supreme court in denying the petition for review en banc.

Federal Question #2 "No Rehearing". The petitioner's intention for rehearing and the verification of filing date rejected with notification rehearing ROA I-50 repealed. A-7

Federal Question #3 "original files and records on appeal released out of custody" for 46 days "under color of law" is a new issue. Motion regarding recertification filed and set aside for no action. Appendix A-23:

Federal Question #3 petitioner requests recertification again to act upon motion. Appendix A-24:

STATEMENT OF THE CASE

PART II

The Public is present in this appeal as the silent partner as to what can happen to a citizen in court and on appeal to a State Court.

PART II is the appeal to the Court of Appeals Div I, of the "trial of errors," which is the unfair trial of Federal Question I, and one subject of this appeal to the United States Supreme Court.

Discrepancies and inaccuracies of the Court Of Appeals decision goes beyond the court's interpretation of their rules.

The citation used in the decision on their page 7 refusing a Jury Foreman Affidavit, is a mistake, technicality, error in judgment,&/ or abuse of discretion. And others

The nature of this trial cannot be described. Therefore, this method of presenting the decision, the unfair trial, affirming the injustice on appeal is used.

+ The entire decision follows in consecutive order the way it was written. Proof from record of errors in the decision, follow:

(STATEMENT OF THE CASE) PART II

Appellate Court Decision: Page 1:

FILE
IN CLERKS OFFICE
COURT OF APPEALS
STATE OF WASHINGTON - DIVISION I
DATE 6/5/78
CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Appellants,

v.

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,

Respondents.

No. 4916-I

DIVISION ONE

FILED JUN 5 1978

Erich and Beatrice Koker, husband and wife, appeal from a jury verdict in their favor in the amount of $4,600 against Noel B. and Winetta Sage, husband and wife, and Noel B. Sage, Jr., in a personal injury action arising out of a 1971 traffic accident. The Kokers' assignments of error concern the size of the verdict, rulings on evidence, conduct of counsel, jury instruction, jury misconduct and newly discovered evidence.

Bias: Please note the above paragraph last 2 lines circled words. The deceit, untruths, and all wrongful acts of the attorneys in trial are called "conduct" by the appellate court, regarding counsel.

The confusion of the jury in the jury foreman affidavit is considered "misconduct" of the jury.

The description may be a sub-conscious protection of the legal profession.

Appellate Court Decision: Page 1:

Error I and II

The Kokers' first two assignments of error concern the jury's award of damages which they contend is grossly inadequate. The evidence is in conflict. The Kokers presented evidence of serious debilitating and painful injuries resulting in lengthy and costly medical treatment; Sage presented evidence tending to show that many of the complaints were nonexistent and much of the treatment was unnecessary.

Neither the trial judge nor the appellate court may retry the facts. The jury found, upon substantial evidence, that only some of the claimed special damages were actually and reasonably incurred. Usher v. Leach, 3 Wn. App. 344, 474 P.2d 932 (1970); Smithline v.

Error I: "Denial Of Motion For New Trial Or In The Alternative Additur"

The comparison focal point used for an award of damages is based upon the case of Ryan V Westgard 12 Wash App 500 (1975).

The Court of Appeals Division I which upheld a jury verdict of $4,600. for permanent drop foot injury and permanent cervical injury IS THE SAME COURT who stated $145,000. is a sensible award for a drop foot injury" . . in Ryan v Westgard, supra.

Treatment of permanent injuries for the purpose of relief is considered unnecessary. There is no treatment to uncripple a drop foot.

Appellate Court Decision: Page 1:

Error 2: "Weight And Preponderance Of The Evidence"

Common sense would indicate the weight and preponderance of the evidence is obviously FOR the plaintiff. See: Appendix B-7

There is testimony of permanent injuries, from two doctors who examined plaintiff and made tests proving the injuries 4½ and 5 years.

Dr. Anders E. Sola, M. D. Physiatrist. See: Appendix: B-7: and Dr. Einar Henriksen, Orthopedic Surgeon who did examination, progress checking, medical repair injuries in falls from accident leg injuries. App B-8:

Psychiatrist Dr. Arthur Freidinger examined plaintiff approximately 15 hours before trial and testified FOR plaintiff in trial. ((It is recently learned this doctor is most generally called as a defense witness.)) Appendix A-22:

The Contrast:

The medical witnesses for the defense consisted of two doctors who had each examined plaintiff once, briefly. The first doctor saw plaintiff 4½ years before the trial and never saw nor heard of her again.

The second defense medical witness saw plaintiff a short while 2 days before trial. Suchan examination arrangement is not competent evidence.

Cont'd

Appellate Court Decision: Page 1: Error 2:

"An opinion by a medical expert as to the physicial condition of an injured plaintiff and the cause of that condition based partly upon an examination for the purpose of qualifying himself as a witness and partly on the symptoms and the history of the case outlined to him by attending physician, was held to be incompetent evidence." Miller v St. Paul R. Co. 64 NW 554 (1895) 62 Minn 216

Favored By Law Plaintiff Medical:

There are three medical witnesses of note for plaintiff, who proved the injuries with extensive examinations and testing, in contrast to two medical witnesses of the defense doctors who saw plaintiff briefly once each. The appellate court has stated there is "substantial evidence" found by a jury.

"Substantial evidence" and "serious injuries" are a matter of record. The record also presents a jury so confused the jurors voted the victim of injuries "guilty."

Testimony of treating physician and specialist who has seen injured patient a number of times during the extended period of time is FAVORED over that of a physician who has seen patient only briefly in determining damages. Roberts v Tidex, Inc. 251 S 2d 510 Wests Key 571 (10)

Cont'd

Appellate Court Decision: Page 1:

Error 2: "Weight And Preponderance Evidence"

The Judge Knew:

The judge of the trial court was unsure of his ruling on denial of motion for new trial or additur. The judge felt there were inadequate damages for the injuries he heard and observed in the courtroom. The Judge said:

RP VOL V p 471/24-25: RP VOL V p 473/22-23:

"Had I been the trier of fact, the Kokers would have had a substantially greater verdict."

"I don't like the verdict - -"

Duty:

When a verdict rendered by a jury does not meet the approval of the trial court, no duty is more imperative than to set the verdict aside and grant a new trial. Nicholas v Latham 295 P 2d 631, 179 Kan 348

Not only does the trial court possess authority to grant a new trial, absent an abuse of discretion, but it rests under a duty to vacate a verdict of which it disapproves and direct that the cause be tried anew. Raines v Bendure 199 P 2d 456, Myers v Wright 208 P 2d 589, 167 Kans 728

Cont'd

Appellate Court Decision: Page 2:

4916-I/2

Error I and II

Chase, 1 Wn. App. 589, 463 P.2d 177 (1969). A new trial may be granted if the verdict does not award undisputed special damages, Kasparian v. Old Nat'l Bank, 6 Wn. App. 514, 494 P.2d 505 (1972), but that is not this case. We have no power to substitute our judgment for that of the jury when the amount of damages is disputed. Cowan v. Jensen, 79 Wn.2d 844, 490 P.2d 436 (1971).

Jury Judgment:

A jury so confused they think a victim is guilty, has no right to make a judgment that is allowed to be affirmed.

Please note there is no mention of deceit and wrongful acts, and abuse of discretion by lack of investigation by the judge and other.

The petitioner did not ask the appellate court to substitute their opinion for the jury. The appellate court was given facts and proof from the record of a deceitful, unfair trial and abuse of discretion rulings. It should have been considered a Constitutional matter of right to set aside the jury verdict under the plain error circumstances reported.

Instead, there seems to be a consistent effort to bypass justice, protect the wrongdoers, penalize the victim, and allow this unfair trial into the archives of unreported decisions forever, so that no one else will know.

Appellate Court Decision: Page 2:

Error 3

The Kokers next assign error to the trial court's rulings permitting Sage's counsel to cross-examine the Kokers' doctors by reading medical reports of nontestifying doctors in front of the jury. The Kokers' doctors had reviewed and considered these reports prior to drawing their conclusions concerning Mrs. Koker's injuries. The trial court's rulings were correct. The reports were used to accomplish the ultimate purpose of cross-examination in that they tended to cast doubt upon the witnesses' testimony. By testifying as to their opinions of Mrs. Koker's injuries, the witnesses invited inquiry into medical reports they had considered prior to drawing their conclusions. The trial court has broad discretion in permitting such cross-examination, and in the present case there was no manifest abuse of that discretion. Smith v. Seibly, 72 Wn.2d 16, 431 P.2d 719 (1967).

Error 3: Not For The "Truth Or Untruth"

The Conflict Authority case of Brown v Cocoa Cola Bottling infra, proves the appellate court decision incorrect and is abuse of discretion to uphold abuse of discretion by the trial court judge.

There is such confusion in trial from the ruling of error 3 by the trial judge, that the judge cannot tolerate it himself and excuses the jury, saying: RP VOL II p 133/3-4:

"Members of the jury, I am going to excuse you until counsel can get themselves organized."

Prejudicial impression of confusion for the jury. Please consider the merit of my opposition to the Court of Appeals Div. I decision on the grounds of abuse of discretion of not reversing this appeal.

CONFLICT #I

CASES TO SUSTAIN JURISDICTION HEREIN

Jurisdiction should be granted to the petitioner because the Court of Appeals Division I - State of Washington, is in conflict substantially with the decision of another court of appeals and the State Supreme Court in regard to proper reversal of the cause. The petition to review was denied.

Conflict Case Error 3:

Not For The "Truth Or Untruth"

The trial court judge was hesitant, reluctant, unsure, when he made what the judge called a "thin line" ruling allowing medical reports in cross examination of plaintiff doctors only "not for the truth or untruth." For defense doctors the medical reports used as "reliable."

The medical reports were 2 to 4½ years old from non-testifying doctors who did not know of the proof of injury and did not take the proof-tests themselves but had only examined the petitioner superficially.

One plaintiff doctor's report was a letter to my attorney September 1974 and February 1975. The "thin line" ruling was objected to by plaintiff attorney on the grounds of hearsay and work progress.
RP VOL I p 66/1-6: p 68/11-25: p 69/1-20: p 69/21-25: p 70/1-4: Running Objection p72/3-7:

Objection overruled.

Cont'd

Conflict Case Error 3: (Cont'd)
Not For The "Truth Or Untruth"

The appellate court decision says the reports of non-testifying doctors were used for cross-examination purposes of the treating doctor to cast doubt upon the doctors testimony.

The medical reports should not have been allowed "not for the truth or untruth" because contradiction of testimony involves the credibility and such contradiction for that purpose would have to be offered for the TRUTH and then cross-examination of the doctor who made the report, in court.

There is a case so proving this from the State of Washington Supreme Court. This case pertains to Evidence-Hearsay-Writing-On Cross-examination. BROWN V COCOA COLA BOTTLING 54 Wn 2d 665: 344 P 2d 207 (1959) Quoting:

"In such an action, the trial court correctly rejected a written report made by the plaintiff's physician to one of plaintiff attorneys concerning a physical examination of the plaintiff for the purpose of contradicting testimony . . "

". . since the contradiction of this testimony involved the credibility of the physician and any such contradiction would have to be offered for the truth of the facts asserted therein, and therefore, came within the ban of the hearsay rule."

This authority to prove the ruling is abuse of discretion, was completely ignored on appeal.

Appellate Court Decision: Page 2:

Error 3: Not For The "Truth Or Untruth"

|| Citation || CONSTITUTION OF THE UNITED STATES AMENDMENT 14 Note 1036 p 793

"A ruling based on evidence which a party has not been allowed to confront or rebut is one which denies due process." Carter v Morehouse Parish School Bd. C. A. La (1971) 441 F 2d 380, Cert Denied 92 S. Ct. 201, 404 U. S. 880. 30 L Ed 2d 161:

|| Citation || CONSTITUTION OF THE UNITED STATES ANNOTATED AMENDMENT 14 Note 603 p 454 Due Process Of Law

"While judges have authority to maintain decorum in their courts including regulation of professional conduct of attorneys, such authority must be exercised pursuant to, and is necessarily circumscribed by, procedural safeguard, contained in this clause and equal protection clause of this amendment." Weintraub v Adair D. C. Fla 1971 331 F Supp 448

|| Citation || 14 FPD 2d 621 Wests Key 314 CONSTITUTIONAL LAW

"Right to confront and cross-examine witnesses is fundamental aspect of procedural due process." Jenkins v McKeithen, 89 S. Ct. 1843, 395 U. S. 411, 23 L Ed 2d 404, Rehearing Denied 90 S. Ct 35, 396 U. S. 869, 24 L Ed 2d 123 (1969)

Appellate Court Decision: Page 2 Page 3:

Error 3(A)

The Kokers' next assignment of error concerns a deposition of Dr. Sata which had not been transcribed prior to trial. They contend that it is newly discovered evidence withheld by the defense which contradicts Dr. Sata's medical report and entitles them to a new trial. The deposition, however, was taken on August 20, 1975 and the trial began June 10, 1976. The Kokers' counsel was present at and participated in the deposition and evidently chose not to transcribe it. To be "newly discovered," the evidence must be discovered after trial. Nelson v. Mueller, 85 Wn.2d 234, 533 P.2d 383 (1975). There is no evidence to support the Kokers' contention that the deposition was not discovered until the trial had ended.

Error 3(A): "Newly Discovered Evidence"

The decision of the appellate court above, skirts the issues in obscurities. This error is deceit in a court of law and not a "contradiction." Deceit in Error 3(A) is wrongdoing under the Constitution creating an unfair trial, and the appellate court is upholding that which is adverse to the rights of a citizen.

To have a doctor change a medical report in a deposition and then the defense attorney reads the original medical report to the jury in court portrayed as bonafide, is pure and simple "deceit", not contradiction.

Appellate Court Decision: Page 2: Page 3:

There is inaccuracy in the appellate court decision which changes the concept of the "newly discovered evidence."

This petitioner made it clear the "newly discovered evidence" is the proof of deceit in a trial. The deposition is the "vessel of proof" only. ERROR WAS EXPLAINED FULLY!

Quoting: Appellant's Opening Brief: p 38:

"Newly discovered evidence is that evidence which was withheld by the defense."

"The defense counsel is the reason for the newly discovered evidence."

Quoting: Assignment Of Error 3(A)
Appellant's Opening Brief p 3:

"Newly discovered evidence is that the medical report of Dr. Sata is changed in deposition but withheld from the jury."

Quoting: Appellant's Reply Brief: p 19:

"Newly discovered evidence is finding out about the improper conduct."

Quoting: Appellant's Reply Brief: p 19

"To read a medical report into the record five times under the guise it is bona-fide, is deceit."

Appellate Court Decision: Page 2: Page 3:

Presentation of Error 3(A) was clearly stated to the appellate court but they have misunderstood.

Quoting: Motion For Consideration: P 17:

"The newly discovered evidence is NOT the deposition itself as such, but is the proof of wrongdoing by quasi judicial officers of the court CONTAINED IN THE DEPOSITION. Before the trial, that proof was not wrongdoing because the act of wrong had not been committed."

"There is no way to discover new evidence before trial because this "newly discovered evidence" happened at trial, in trial, during trial."

"The defense attorney read an original medical report of Dr. Sata as bonafide when he knew the report had been changed in deposition. Plaintiff attorney knew, objected, was overruled and remained silent when he had a duty to speak."

"Civ Code 1710, Subd 3, says the suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact, is a "deceit."

Appellate Court Decision: Page 2: Page 3:

The Petition For Review was met with rebuff and denial. Petitioner said p 12:

"Presentation by pro se must have presented a communication barrier. The deposition itself as such, is not the newly discovered evidence. The deposition is only the "vessel of proof" of deceit and fraudulant conduct, misrepresentation of fact, suppression of fact, misleading the jury, withheld evidence. The wrong-doing happened in trial, at trial, during trial so how could this new evidence be discovered BEFORE trial?"

[Citation]

"Fraudulant concealment" is the intentional nondisclosure of material facts by one owing a duty to disclose." Allen v Layton 235 A 2d 261 (1) (1967) Fraud Wests Key 17: 23 Am Jur Fraud and Deceit §578 p 854

Appellate Court Decision: Page 2: Page 3:

Quoting: Motion For Reconsideration: P 17:

"If counsel chooses not to recognize integrity rules of his profession, the client should not be penalized." Ryan v Ryan 48 Wash 2d 593, 295 P 2d 1111 (1956) RCW TITLE 4 Civ Proc 4.76.20 (17)

Quoting: I ask you to reconsider new issue for review II not mentioned in your decision." P 17

New Issue II:

The defense attorney was untruthful to the jury saying the ear specialist found the fullness-feeling in the ear of plaintiff to be caused from a staph infection. Not true and the defense attorney knew it.

The ear specialist testified in a deposition that the "feeling of fullness" in the ear was from accident injuries. The doctor testified in deposition his medical report referred to "hearing" not to the feeling of fullness. The defense attorney called this deposition.

In the trial, Beatrice Koker testified truthfully that this fullness feeling is present to this day and the ear must be cleared similar to the feeling of height when going over the mountains.

Appellate Court Decision: Page 2: Page 3:

Who is the jury going to believe? An attorney publicly declared honest, protective, on oath or a middle aged woman depicted by the defense attorney as a mental-status-alien?

Irrelevant:

The fact whether the plaintiff attorney chose to transcribe Dr. Sata deposition or not is completely irrelevant to the issue of the defense attorney. The plaintiff attorney kept silent when the defense attorney was deceitful in a court of law. The transcribed deposition would have had no bearing whatsoever as the plaintiff attorney had a duty to speak and disclose the deceit and this he did not and would not do with or without the deposition transcribed.

Difference:

The appellate court considers the deposition itself as the intended newly discovered evidence when that is not so. The newly discovered evidence is the CONTENTS CORRELATED TO THE REPORT OF PROCEEDINGS thus the proof of deceit.

"Discovery of Deceit" is the newly discovered evidence. The location of the discovery is not the issue.

Appellate Court Decision: Page 3:

The Kokers make several assignments of error concerning the conduct of defense counsel. They include: (1) (4) extraction of promises from jurors during voir dire and requests during final argument that they keep their promises to him:

> I, and my clients take that as a serious solemn promise that is being called in, so to speak, at this time.

(7) (2) the statement during closing argument that counsel thinks a 9(C) defense expert witness is commendable and extremely thorough; (3) the testimony of this same defense expert witness describing Mrs. Koker as an appealing woman and the closing argument of defense counsel alluding to this testimony; (4) (13) misstatement of testimony and casting aspersions on Mrs. Koker and her witnesses during final argument; 9(a) (5) an objection by defense counsel which improperly implied that one of the Kokers' lay witnesses could not recall events 5 years ago (the witness explained her difficulty as being due to how bad it made her feel to describe Mrs. Koker's injuries); and (6) 9(B) numerous insinuating questions by defense counsel which implied that Mrs. Koker had a peculiar mental state.

At the trial, no objection was raised as to any of this conduct. Objections at trial would have enabled the court to correct any improper conduct by instructing the jury to disregard it. We will review matters not raised at trial only if the conduct is so flagrant that no action by the trial court could have removed its prejudicial impact. Strandberg v. Northern Pac. Ry., 59 Wn.2d 259, 367 P.2d 137 (1961). There is no such flagrant conduct in the record.

Identification: Inserted numbers in ink are the error number.

(1) Error 4: (2) Error 7: (3) Error 9(C):

(4) Error 13: (5) Error 9(A)(6) Error 9(B):

Appellate Court Decision: Page 3:

Objections waived below affecting right by law can be noticed on appeal. Cumulative errors may not stand alone for reversal but together may. State v Badda 63 Wn 2d 176, 385 P 2d 859 (1963)

Error 4: "Improper Voir Dire"

The defense attorney extracted personal promises from the jury, having the effect of a "psychological laser beam", a bond to one attorney. RP VOL IV p 457/23-24-25: Quoting:

> "Now, I realize that, I asked you for some difficult promises at the outset of this case, but that is my job and it is your job. It is your job to live up to those promises."

No objections. No judicial notice. The subject matter of the promises is not the issue; the issue being "promises" to an attorney are prejudicial in bondship instead of impartiality. The jury had an oath to keep, not promises.

Error 7: "Vouching For Credibility"

A lawyer is not to assert his personal opinion as to the justness of a cause, or to the credibility of a witness. DR 7-106. RP VOL IV p 449/2-8: Defense Attorney says:

> ". . the manner in which he approaches a case, I THINK is very commendable."
> "He is extremely thorough."

Appellate Court Decision: Page 3:

Error 9(C): "Appealing Woman"

An expert witness purporting to have special training, education, experience, knowledge and ability testified in this manner: RP VOL III p 288/20-21:

> "A physical and neurological examination reveals what I felt a rather appealing woman."

There is a xeroxed picture Appendix B-9 which will show you the defense plan to assure the jury the doctor 2-days-before-trial had no animosity toward the plaintiff.

Correlation in closing argument by the defense attorney proves such a plan. RP VOL IV p 448/22-25: p 449/1-2: The defense attorney says:

> "It is important how the physician feels about a patient. He told you, I believe, that she was an attractive individual to him, that he did not dislike her, anything like that."

The memory of the medical examination by that doctor is one of rudeness. No man, doctor or not a doctor, would treat a lady rudely if he found her "appealing."

Appellate Court Decision: Page 3

Error 13: "Closing Argument - Defense"

The defense attorney cast aspersions on the plaintiff treating doctor who is nationally and internationally known, and the plaintiff attorney helped the defense attorney.

The orthopedic surgeon, Dr. Einar Henriksen, testified: RP VOL IV p 377/6-7-8:

> "I did not prescribe any change in her treatment. I just advised that she continue on her present routine of treatment with Dr. Sola."(Treating Dr)

Dr. Henriksen has been an orthopedic surgeon since 1950 and examinations for plaintiff over a period of 4½ years before trial.

Plaintiff attorney in closing argument aiding and abetting the defense attorney: RP VOL IV p 460/13-23:

> "He(defense attorney) says Dr. Sola has mismanaged this whole thing. Well, it is not our fault, ladies and gentlemen, if a doctor has mismanaged it, if our client in this case, Mrs. Koker, was being controlled by the doctor. In other words, he was directing the treatment and she was getting relief from what he was doing. Now, if he was doing it wrong that is not our fault. We were forced to go for treat-

Appellate Court Decision: Page 3: Error 13: (Cont'd)

> ment and this is what we received. Now, maybe they didn't like the doctors that we were using but that is not our responsibility, ladies and gentlemen. We are not liable for that."

It is interesting to note the treating doctor's deposition held questions and answers to key proof of injury that was never asked in court!

The deposition was not opened and published.

The affidavits B-2 B-3 B-4 B-5 in the Appendix were not solicited; those making the sworn affidavit testimony came to me with this information.

Error 9(A): "Visual" not "Memory"

The subject matter of a "before" and "after" walk of a crippled drop foot injury is not a matter of memory, but is a visual description.

A lay witness had difficulty to speak of the contrast difference as the comparison brought tears. She was a close friend and knew the difference well.

The defense attorney cast aspersions on her memory and his objection was overruled but the memory-seed was planted prejudicially and no clarification that memory was not even involved. "Visual" Not "Memory."

Appellate Court Decision: Page 3:

Error 9(B): "Insinuating Questions"

Questions that had no bearing on the accident or injuries and were not relevant to the issues were asked by the defense attorney.

Imagine the prejudicial reaction of a jury to hear this question: RP VOL II p 209/19-20: "Does Mrs. Koker take doorknobs and doorhandles off the doors?"

A very ordinary household happening in need of repair occurred. The ancient 1919 front door lock assembly became separated from the inside and the shaft and knob had to be inserted to open the door. Before a family decision could be made whether to replace the entire door or fix the door and get a new lock system, the wreck happened and there was no money for anything.

My attorney knew of this whole situation as he had been to this house. BUT THE DEFENSE ATTORNEY WOULD HAVE NO WAY OF KNOWING FROM SEEING THE SITUATION.

To use this method of undermining the intelligence and mentality of the plaintiff is a ruse of the lowest form and disgrace. Plaintiff attorney made no objection, no explanation, no clarification but just let the jury think the worst of his own client.

Appellate Court Decision: Page 4:

4916-I/4

Error 5

Next, the Kokers assign error to the admission of testimony about letters Mrs. Koker wrote to her doctor and the display of those letters before the jury without their being admitted into evidence. The letters were considered by Mrs. Koker's doctor before he drew his conclusions and thus were relevant. See Smith v. Seibly, supra. Moreover, no objection was made at the trial, and the question may not be reviewed on appeal.

Error 5: "The Letters"

Honorable Justice Warren said:

> "Curiosity of the jurors may be aroused by unusual circumstances such as extended legal argument, hearing in the absence of the jury, of the removal of evidence that consumed considerable time at the trial. Failure to explain such circumstances to the jury is mentioned by Justice Warren as a factor in contributing to prejudice."
> Burgett v Texas 389 U.S. 109 (1967)

Again, the appellate court has misunderstood the presentation of the issues. The Opening Brief makes it clear that the prejudice is LEAVING THOSE LETTERS IN THE VIEW OF THE JURY FOR HOURS, THEN THE LETTERS DISAPPEAR DURING THE LUNCH HOURS AND ARE NEVER SEEN AGAIN, AND NO EXPLANATION TO THE JURY.

Error 5

Appellate Court Decision: Page 4:

The Judge, calling attention prejudicially to the letters in a 8½ x 11 manilla envelope in full view of the jury said: RP VOL II p 147/16-17:

> ". . going to want to inquire of the doctor - - she has a pile of letters there - -"

Jurors are quick to observe attitude of the court toward litigants and their counsel, whether favorable or unfavorable, and to be influenced thereby. Hays v Viscome 264 P 2d 173 Headnote (8) Wests Key 29(4)

The jury heard 9 pages of testimony in the proceedings about the letters plaintiff wrote to her treating doctor. The doctor testified the writing of letters was petitioner's way to cope with injuries.

The petitioner, to waylay self pity from forced physicial idleness, to count for something, to be useful, helpful, did the only other thing she knew to do - - write. There is a diploma from the Newspaper Institute of America. Appendix B-10:

> The letters contained stories, memories, and there is material from those letters printed in a national magazine. Two original crochet designs for ski caps were sold to a national needlework magazine, especially created for handicapped people to do.

Appellate Court Decision: Page 4:

Error 6

> The Kokers next assign error to the admission into evidence of what they term "gibberish notes." These notes were a list of Mrs. Koker's injuries which she prepared prior to her deposition. The portion of the deposition in which she mentioned the list was read to the jury to show those injuries she claimed at her deposition which were not being asserted at trial. The list was admitted at trial because it tended to prove the defense claim that Mrs. Koker had difficulty sorting out her real injuries from imaginary ones. Any evidence which reasonably tends to establish the theory of the party offering it is admissible unless it has too great a tendency to mislead, distract, waste time, confuse or impede the trial. Rothman v. North American Life & Cas. Co., 7 Wn. App. 453, 500 P.2d 1288 (1972).

Error 6: "Gibberish Notes"

Naive Petitioner obeyed her trusted attorney when he asked for a list regarding injuries to be jotted down for the deposition the following day.

The defense attorney confiscated the list as an exhibit to the deposition. The list was introduced as Ex 20 in the trial. The defense attorney read 25% explanation of the list from the Plaintiff's deposition, and 75% of the "gibberish notes" went unexplained. "Gibberish" because that list was a memo to myself and no one else would understand them.

The jury received the "gibberish notes" without the deposition to explain. That is like receiving an index without the book.

Appellate Court Decision: Page 4: Error 6:

The work product of an attorney in a list from his client became Exhibit 20, the prejudicial "gibberish notes" in a court of law.

UNITED STATES SUPREME COURT

Honorable Justice Stone Court Files Printed:

Justice Stone of the United States Supreme Court had his papers in the files, consisting of correspondence, memoranda, private and confidential communications, notes exchanged with colleagues and preliminary drafts of court opinions prepared by Justice Stone and other Justices, living and dead, taken charge of and disposed of by others after Justice Stone passed away.

Someone exploited the opportunity to the fullest and produced a biography replete with the disclosed intimacies and revealed confidences. The book's jacket states a claim that "A notable feature of the work is the unprecedented use of personal comments which the justices scribbled on the draft opinions that were circulated among them and later preserved in Justice Stone's files. This information is from: Edmond Cahn Reader p 260 Eavesdropping on Justice.

Appellate Court Decision: Page 4: Error 6:

The injustice of the confiscation of private papers of the United States Supreme Court has a devious purpose in my opinion.

The exploitation of petitioner's personal memorandum list, a work product, has the purpose of the mental thrust attack by the defense attorney. The defense attorney did not give "mental status" or any other reason.

The defense attorney depicted me, and was allowed to, as "far out" mentally peculiar" "off the deep end and in court on her imagination." The defense attorney is low on medical and his only chance was to confuse the jury and attack the mental status of the plaintiff.

The complaint for the trial does not justify the approach and attack by the defense attorney. Appendix B-11 (a) (b)

Any accident victim will have the aftermath and repercussions and mental anguish and heartache, existing in a ruined way of life, shackled to injuries and no escape.

I am a woman who had a pattern of hard work for 40 years that was suddenly intercepted. Slowness might not be a cross to bear to someone who is slow of nature. But to me, a person who has not spent a lazy day in her life, this crippled condition is a prison.

Appellate Court Decision: Page 4:

Error 8

The Kokers next assign error to the presentation of defense testimony in the middle of their case in chief. This contention has no merit, because the Kokers' counsel agreed to the procedure at trial. The trial judge has broad discretion to admit evidence out of its natural order. Seal v. Long, 112 Wash. 370, 192 P. 896 (1920). There was no abuse of discretion.

Error 8: "Out of Order"

The Trial Court Judge told the jury that because of the various schedules of the defense doctors, those doctors would be called "out of order."

RP VOL III p 223/11-14: The Trial Judge

> "We're really out of order this morning, because you'll remember that we're still in the case that the plaintiff is presenting."

This "out of order" would not have been deemed so much of an error if the trial had been calm, unbiased, unprejudicial and fair. But because of the nature of the deceitful trial and the confusion of the proceedings, to further change the presentation of the testimony is confusion to the jury.

The appellate court found this error to be without merit. There was no consideration of the fact the defense attorney called a mistrial because a plaintiff doctor could not appear in the 1975 trial when called. In 1976 the defense attorney accomodated his own medical witnesses in "out of order."

Appellate Court Decision: Page 4: Page 5:

Error 9(D)

The Kokers next assign error to the overall effect of the rulings of the trial court. The Kokers contend that they did not receive a fair trial, because the court was partial to the defense. We have examined the instances cited by the Kokers and have carefully reviewed the entire record. The Kokers received a fair trial; the trial judge was not biased for or against either party. Cowan v. Jensen, supra.

Error 9(D): "Not Disinterested"

The appellate court has examined the entire record and found a fair trial to consist of deceit in a court of law, an instruction that changed the theory of the case, rulings in conflict to precedent cases, and all other.

The judge allowed the defense attorney to read from 2 medical reports then denied the plaintiff attorney to do the same. Proven: RP VOL II p 133/14-15-16: The Court Says:

> "I am going to let Mr. LeMaster examine him (Dr. Freidinger) from those two medical reports of Dr. Sata regardless of whether or not the doctor remembers having had them at the time."

The plaintiff attorney referred to the reports, and the objection came from the defense attorney to not allow the plaintiff attorney access to one of the medical reports. The court sustained the objection saying:

Error 9(D)

Appellate Court Decision: Page 4: Page 5:
RP VOL II p 164/18-25:

"The court remembers a great deal of confusion and it wasn't clear which reports the doctor had read."

"Objection sustained. I won't let you go into that report."

There again is the double standard. The defense attorney reads two reports regardless of whether or not the doctor remembered having had the report. But the plaintiff attorney is denied. The plaintiff doctors in Error 3 had medical reports "not for the truth or untruth" while the same medical reports for the defense were "reliable."

"The Trap" is in RP VOL III p 304/8-14:

The plaintiff attorney objected on repetition. The judge says, "Fine if you have an objection on repetition." The plaintiff attorney restates he is objecting on repetition. The court answers: "Overruled."

An objection is sustained without the grounds being stated. RP VOL I p 82/18-25: p 83/1-4:

Defense attorney: "I - -

The Court: "Sustained."

The appeal stated Beatrice Koker did not get a fair trial because there is deceit and wrongdoing in the trial, and a Judge who has abuse of discretion not investigating before ruling. And Other.

Appellate Court Decision: Page 5: Page 6:
Error 10: "Before" And "After" Witness Denied:

Error 10

The Kokers next assign error to the refusal of the trial court to allow a recently discovered lay witness to testify to the changes in Mrs. Koker's health and activity level after the accident. The trial court ruling was based upon the cumulative nature of the testimony. Two other lay witnesses testified to the same changes.

A witness discovered shortly before trial may be allowed to testify unless the party calling the witness deliberately withholds the person's name. Barci v. Intalco Aluminum Corp., 11 Wn. App. 342, 522 P.2d 1159 (1974). There is precedent that it might be an abuse of discretion to refuse to allow the somewhat cumulative testimony of a witness without giving the parties prior notice of a rule limiting witnesses. Mogelberg v. Calhoun, 94 Wash. 662, 163 P. 29 (1917). However, in contrast to the offer of proof in Mogelberg, the Kokers stated no facts which would distinguish the proposed testimony from that already given. The offer of proof in its entirety was:

> My offer of proof in this case would be that this lady is Mrs. Conley. The first time I ever talked to her, saw her, knew anything about her as to what she might say or had anything to do with it, was on the evening of the 9th. I went out to her home. I went out there the day before. She was in Aberdeen. She would testify that she knows the plaintiff, that she has visited her home, that she has seen the difference between her present physical condition and that which was apparent and which she knew about before the accident, and that she would further describe her differences in activity. That is generally the subject matter.

Because the offer adds nothing to the evidence already received, its exclusion was not prejudicial. Sutton v. Mathews, 41 Wn.2d 64, 247 P.2d 556 (1952). We cannot consider a more detailed offer of proof for the first time on appeal. Cochran v. Harrison Memorial Hosp., 42 Wn.2d 264, 254 P.2d 752 (1953).

CONFLICT #II

CASES TO SUSTAIN JURISDICTION HEREIN

Conflict Case Error 10:
"Before" And "After" Witness Denied

The nature and effect of nerve injuries is subjective and needs lay witnesses. A "before" and "after" lay witness was denied the plaintiff in trial and there was no advance notice of limitations of lay witnesses by the judge.

The Appellate Court allowed that this error could be abuse of discretion, but that the offer of proof by petitioner's attorney was not adequate. Limitations of witnesses was held improper in VARCI v INTALCO Aluminum 11 Wash App 350, 552 P 2d 1159 (1974) and DUFFY v GRIFFITH 4 A 2d 170 (1939)

There is a case in conflict with the ruling of the appellate court that the offer of proof is not adequate: KUBISTA v ROMAINE 14 Wn App 58, 538 P 2d 812 (1975) Washington Supreme Court Division II.

Summary Of Conflict Case:

In the case of Kubista v Romaine supra, the action is for personal injury and the jury judgment is $25,000. for lower back injury. The main contention by the plaintiff there in appeal is inadequate damages are the result of erroneous ruling the witness should have testified and the "offer of proof" was adequate.

(Cont'd)

Conflict Case Error 10: (Cont'd)
"Before" and "After" Witness Denied

Summary: (Cont'd)

In KUBISTA v ROMAINE supra, the judge said it was prejudicial not to accept the offer of proof whose requiste need only make clear to trial court what evidence is offered, contains the reasons relied upon for admitting evidence, enables trial court to make an informed ruling. That case was reversed.

#

In the case at bar, the appellate court should have ruled the offer of proof adequate, and allowed reversal of the case.

A formal offer of proof is not even an absolute requiste to enable presentment if that error affects the substantial rights of the parties. In the case of this petitioner, my rights to a constitutional privilege to present testimony which supports my theory of the case was denied. HARRIS v SMITH 372 F 2d 803 (1967): JOHNSEN v JOHNSEN 78 Wn 423, 139 P 189 (1914)

In SNOWHILL v LIBRUANCE 435 P 2d 624 (1967) 20 witnesses were heard by a jury in a personal injury case. I had 2 witnesses and the third denied without advance notice of limitation.

In MOGELBURG v CALHOUN 94 Wn 662, 163 P 29 (1917) there was abuse of discretion found to limit the number of eyewitnesses to 6 or 8 after five had testified viewing accident.

Appellate Court Decision: Page 6:

Error 11

> The Kokers next assign error to the use of exhibit No. 1, Mrs. Koker's doctor's bill, which they contend was not given to the jury. Evidently, their claim is based on the index to exhibits in the verbatim report of proceedings. The index does not note whether the bill was admitted into evidence. However, the exhibit itself is stamped "FILED" and "ENT'D," and the record shows that the amount of the bill was argued to the jury. It is apparent that the doctor's bill was admitted into evidence and considered by the jury.

Error 11: "$2,839. Forgotten"

The medical expense of $2,839. medical expense for the treating doctor was introduced and identified in trial as Exhibit 1.

The defense attorney asked that it be NOT ADMITTED until after his cross-examination. The judge and both attorneys agreed.

Defense cross-examination came and went. Redirect was finished. Recross was through, and Exhibit 1 was NEVER ADMITTED.
Identified: RP VOL I p 49/15-21:

The appellate court says as long as the Exhibit 1 was stamped "filed and ent'd" and the amount of the bill argued to the jury, that makes the exhibit admitted. The law says differently:

> "The tramscript of the trial controls over the docket entries." West's General Digest 4th Series Volume 30 p 59 Appeal and Error West's Key 664 (1) Crow v Housworth 313 A 2d 523 (1974)

Appellate Court Decision: Page 6:

Error 12

> The Kokers' next assignment of error concerns the jury instruction on the measurement of damages. The Kokers' counsel did not object to the instructions; objection concerning jury instructions cannot be raised for the first time on appeal. Hamilton v. State Farm Ins. Co., 83 Wn.2d 787, 523 P.2d 193 (1974).

Error 12: "Instruction 6: Damages:"

The jury instruction is a pattern instruction and the error 12 changed the theory of the case, from admitted liability to liability.

The instruction is a Washington Pattern Jury Instruction WPI 30.01, in which there is to be phrases deleted if the case is admitted liability. This was not done.

Both attorneys, plaintiff and defense, submitted the identical erroneous pattern instruction.

The Court of Appeals division I has refused "plain error" saying objection to instruction cannot be raised for the first time on appeal.

The authorities differ, thus making the appellate court decision abuse of discretion.

> The plain error rule is to apply to obvious circumstances of injustice. Irving v Bullock 549 P 2d 1185 (1976)

Changing the theory of the case is obvious. No remedy or redress for the obvious is injustice.

Appellate Court Decision: Page 6: Error 12:

The prejudicial effect of an erroneous formula instruction is confirmed in Mills v Park 67 Wn 2d 71, 409 P 2d 606 (1966) and Sage v Northern Pac R Co 62 Wn 2d 6, 380 P 2d 856 (1963): Donner v Donner 46 Wn 2d 130, 278 P 2d 780 (1955)

Prejudice from an erroneous instruction is presumed unless the contrary affirmative appears. There is prejudice, when the theory of a cause is changed. 2A Wash D-25 Inst. 1031.6

Jury instruction objection cannot be lumped into one category in circumstances such as the case at bar.

Plaintiff's attorney even forgot his set of the instructions at his office. RP VOL IV p 415/14-15-16:

A miscarriage of justice occurred in the instruction Error 12 because:

(a) Attorneys committed the act.
(b) The trial Judge did not notice.
(c) The appellate court will not recognize.

Objection can be raised for the first time on appeal if there is an obstruction to justice and miscarriage of justice. An instruction changing the theory of the case, is both. Shokuman Shimaukuro v Nagayama 140 F 2d 99 (1965)(5) Harris v Smith 372 F 2d 806(14) (1967)

Appellate Court Decision: Page 6:

Error 12: "Instruction 6: Damages:"

|| Citation || WASHINGTON PRACTICE - ORLAND Error In Law At Trial CR 59 p 96 (7)

"When record discloses an error in an instruction given on behalf of the party in whose favor the verdict was returned, the error is presumed to be prejudical, and requies a new trial unless it affirmatively appears that the error was harmless." Zwink v Burlington Northern, Inc. (1975) 13 Wash App 560, 536 P 2d 13

|| Citation || "If facts are submitted to and tried by a jury in state court, the Seventh Amendment to the Constitution, providing that "no fact tried by a jury shall be otherwise re-examined in any Court of the United States than accordin to the rules of the common law", prevents the SUPREME COURT from retrying the facts.

BUT LEGAL QUESTIONS CONCERNING THE COMPETENCY AND LEGAL EFFECT OR SUFFICIENCY OF THE EVIDENCE, OR THE THEORY UPON WHICH THE CASE WAS SUBMITTED TO THE JURY, ARE OPEN TO THE COURT."

|| Citation || Irving v Bullock 549 P 2d 1185 Headnote (5) Appeal and Error West Key 215 (1)

"There must be plain error before court will review propriety of giving instructions."

Appellate Court Decision: Page 6: Error 12:

|| Citation ||

"The Supreme Court of the State of Washington holds consistently that it is prejudical error to give irreconcilable instructions upon a material issue in the case. Where instructions are inconsistent or contradictory or on a given material point, their use is prejudicial, for the reason that it is impossible to know what effect they may have on the verdict." Smith v Rodene 69 Wn 2d 482, 418 P 2d 741 (1966): Matteson v Thiel 162 Wash 193, 298 P 333 (1931): Babcock v M & M Const. Co. 127 Wash 303, 220 P 803 (1923):

|| Citation ||

"The appeal is related to denial of substantial rights of the plaintiff and prejudice is clearly within the range of not only possibility but probability, and established fact. If the error is related to the substantial rights of the plaintiff and prejudice is clearly within the range of possibility, a demonstration of prejudice is not required."
Snyder v Lehigh Valley R. R. 245 F 2d 112, 115: (1957):

|| Citation || "In the absence of timely objection does not necessarily preclude the consideration of error which may have resulted in a miscarriage of justice."
Pritchard v Liggett & Myers Tobacco Co. 350 F 2d 479, 480: 382 U. S. 987, 86 S. Ct. 549, 15 L Ed 2d 475 Cert Denied

Appellate Court Decision: Page 6: Error 12:

|| Citation || "The Supreme Court of the State of Washington holds consistently that it is prejudical error to give irreconcilable instructions upon a material issue in the case. Where instructions are inconsistent or contradictory or on a given material point, their use is prejudicial, for the reason that it is impossible to know what effect they may have on the verdict." Smith v Rodene 69 Wn 2d 482, 418 P 2d 741 (1966) Matteson v Thiel 162 Wash 193, 298 P 333 (1931): Babcock v M. M. Const. 127 Wash 303, 220 P 803 (1923)

|| Citation ||

"The appeal is related to denial of substantial rights of the plaintiff and prejudice is clearly within the range of not only possibility but probability, and established fact. If the error is related to the substantial rights of the plaintiff and prejudice is clearly within the range of possibility, a demonstration of prejudice is not required." Snyder v Lehigh Valley R.R. 245 F 2d 112, 115: (1957)

|| Citation || "In absence of timely objection does not necessarily preclude the consideration of error which may have resulted in a miscarriage of justice."
Pritchard v Liggett & Myers Tobacco Co. 350 F 2d 479, 480: 382 U. S. 987, 86 S. Ct. 549, 15 L Ed 2d 475 Cert Denied

Citation || HANDBOOK OF THE LAW OF
§107 FEDERAL COURTS CH 12 p 490

"The Court first recognized the adequate state ground rule but drew a distinction between state substantive grounds and state procedural grounds, and declared it to be settled that "a litigant's procedural defaults in state proceedings do not prevent vindication of his federal rights unless the State's insistence on compliance with its procedural rule serves a legitimate state interest.

This indicates that the Court could review the case if it found that the state rule served no legitimate state interest. Thus, to enforce the contemporaneous objection rule would be to force resort to an arid ritual rather than to serve s substantial interest."

A pattern instruction erroneously submitted by both the defense attorney and the plaintiff attorney changed the theory of the case.

The appellate court observed the "no objection in lower court precludes consideration on appeal" rule. Cumulative Errors.

That decision-attitude discarded circumstances that warranted use of the judiciary tools to justice, the RAP Rule 1.2 infra, and the "Plain Error Rule" and others, to a court porported to be a subsidiary of the Constitution of the United States to see there is justice for all.

Appellate Court Decision: Page 6:

> The Kokers have moved to raise another issue on appeal concerning the failure to instruct the jury on damages for the aggravation of a dormant, preexisting condition. The instruction was initially proposed by the Kokers' counsel, but abandoned because he believed that there was no evidence to support it. This decision precludes raising the issue on appeal. Hunt v. King County, 4 Wn. App. 14, 481 P.2d 593 (1971).

A pro se person must first find the law and authority before recognizing a circumstance as error. May 18, 1977 Rule 12.1 Basis For Decision regarding the proven spondylosis omitted, was filed with the Court of Appeals Division I. The decision was not made by the appellate court until June 5, 1978. Rule 12.1 and aggravation of spondylosis omitted from the instructions was mentioned in oral argument February 22, 1978.

The judge is surprised when the aggravation instruction is withdrawn by plaintiff attorney.

RP VOL IV p 422/10-16:

Defense Attorney: "Well, there has been no testimony with respect to aggravation."

Plaintiff Attorney: "I will agree to pull that out."

THE COURT: "You agree to pull it out? Okay, that takes care of that one."

The surprise of the Trial Court Judge is an "alert" which he disregarded in abuse of discretion not investigating withdrawl of an instruction for a bonafide injury.

There is testimony in trial RP VOL I p 45/24-25: RP VOL I p 46/1-4: and 12-22: There was sufficient evidence to warrant an instruction.

II Citation II 75 Am Jur 2d 610 §652.
Sufficiency Of Evidence:

"In determining whether there is evidence that will warrant an instruction, the court does not pass on the weight and sufficiency of the evidence. It is not error to submit an instruction covering a theory advanced by a party if there is any evidence on which to base it, although it may be slight and inconclusive, or opposed to the preponderance of the evidence."

However, it may interest the United States Supreme Court to know the extent of the evidence in a deposition not transcribed, of Dr. Sata. This is the doctor who changed his medical report in his deposition, and yet the defense attorney read the original medical report as bonafide. The plaintiff attorney remained silent and protected the defense attorney and abandoned the client.

The deposition is not transcribed. The doctor is not called to court to testify. The doctor has definite evidence of the aggravated spondylosis. The plaintiff attorney withdraws the instruction. The court is surprised.

The petitioner lives with the pain and aggravation of an injury and injustice.

Plaintiff attorney is questioning Dr. Sata in deposition. Dr. Sata is a Neurologist.

Dr. Sata Deposition: Page 50-51-52:

Q: "Doctor, you have referred to x-ray report dated June 9, 1971, in which it is stated that there is degenerative narrowing of the 6,7 intervertebral levels. Is that right, sir?"

Dr. Sata: "Yes, sir."

Q: "That is the condition that has preexisted the accident in question, isn't that true, sir?"

Dr. Sata: "Yes."

Q: "Doctor, are you acquainted with cases where a condition where there is a degenerative narrowing between discs where there is no pain and no discomfort, and no complaints until some traumatic injury has occurred?

Dr. Sata: "Yes."

Q: "Doctor, have you had any experience in the practice of medicine where people have complaints of pain where there is no, what we generally call, objective evidence by a doctor?"

Dr. Sata: "Yes."

Cont'd

Dr. Sata Deposition: (Cont'd)

Q: "Is it your opinion, Doctor, medically reasonable probable that this patient has suffered complaints and discomfort and pain in her neck because of an aggravation of this preexisting condition?"

Dr. Sata: "I felt that, yes."

Q: "Doctor, do you have an opinion as to whether this lady is honest in her personal feeling and discomfort as she tells it to you?"

Counsel Discussion

Dr. Sata: "I remember the question, it is yes."

The plaintiff attorney told his clients the petitioners that there was nothing in this deposition. This led me to believe the deposition adverse and the document was transcribed for the appeal to present everything out in the open - - including what I thought was adverse.

Instead, here is a deposition in which there is a changed medical report proving deceit in a court of law. Here is a deposition with evidence of a preexisting aggravation and other.

It is important that the United States Supreme Court see the unfair trial in depth. There is a case closely parallelling my injuries. Bonner v U. S. 339 Fed Supp 640, 654 (1972)

JURY FOREMAN AFFIDAVIT

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

The Kokers suggest another new issue in their reply brief. They contend that the jury was guilty of prejudicial misconduct by spending several hours debating Mrs. Koker's "guilt" or "innocence" despite Sage's admission of liability. Issues raised for the first time in the reply brief will not be considered on appeal. Mead School Dist. No. 354 v. Mead Educ. Ass'n, 85 Wn.2d 278, 534 P.2d 561 (1975).

Affirmed.

Pursuant to RCW 2.06.040, this opinion will not be published.

Swanson, J.

WE CONCUR:

Farris, C.J. Swanson, J.

The Court Of Appeals Division I has stated in their opinion issues raised for the first time in the reply brief will not be considered on appeal.

This decision is in conflict with the Court's own rules. COURT RULES RAP 1.2 says the rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits.

Cont'd

JURY FOREMAN AFFIDAVIT

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

The following excerpt is footnote 2. taken from the cited case presented by the court of appeals in their ruling to not recognize the confusion of the jury in the jury foreman affidavit. Cited case page 565. 534 P 2d 561 (1975)

This proves the error of the Washington State Courts on Appeal and the technicality that falsely states the fact.

Cite as, Wash., 534 P.2d 561

85 Wash.2d 278

MEAD SCHOOL DISTRICT NO. 354, a Municipal Corporation, Respondent,

v.

MEAD EDUCATION ASSOCIATION (MEA), an association, et al., Appellants.

No. 43322.

Supreme Court of Washington, En Banc.

April 24, 1975.

2. In their petition for certiorari reviewing the injunction, appellants made several arguments regarding the propriety of the injunction under traditional principles of equity and prevailing labor law. Because of our disposition of the Open Public Meetings Act question, we did not reach them. Mead School Dist. v. Mead Educ. Ass'n, *supra*. Appellants' brief in this case incorporates the Open Public Meetings Act arguments, but not these others. In addition, their reply brief in this case questions the power of an equity court to order specific performance of a personal service contract. This issue was not raised in the opening briefs, however, and consequently will not be considered here. ROA I-41(1).

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

The Court of Appeals Division I- cites a case on page 7 of their decision which does not apply to the circumstances of this petitioner. Circumstances of serious confusion of a jury in a personal injury cause of action.

The reference in the cited case is to ROA I-41 page 394 1976 Desk Copy WASHINGTON RULES OF COURT. This is the Supreme Court Rules On Appeal which is now incorporated into Rules of Appellate Procedure which includes The Court of Appeals and the State Supreme Court. The decision was reached June 1978.

So the cited case refers to the old rule of ROA I-41 which states:

"But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal NOT CLEARLY POINTED OUT IN HIS ORIGINAL BRIEF."

The grounds for reversal were CLEARLY pointed out in petitioner's original brief to the appellate court, and even before.

The confusion of the jury was noted to the Court of Appeals Division one in the appeal itself as "passion or prejudice of the JURY DID NOT UNDERSTAND THE EVIDENCE."

As long ago as the Civil Appeal Statement August 1976, this petitioner told the appellate court that ". .if the appellants had been jurors on the case, it would have left them with confusion of thought from beginning to end."

In petitioner's opening brief p 69, the Court of Appeals Division I was told that "Instruction 6: Damages: contributed more CONFUSION to the facts and issues, and that this case was only to settle the amount of damages, and that the instruction 6 made it sound as if the plaintiff was ON TRIAL, not in trial."

Opening Brief p 69 was related the newspaper man who came into the courtroom and stayed just a short while, then asked a waiting witness in the hall why the plaintiff was on TRIAL!

In presenting the jury foreman affidavit to the Court of Appeals in the reply brief the court was told exactly how the affidavt was obtained, they knew all of the mention of CONFUSION IN THE TRIAL from the appeal, civil appeal, and opening brief. Quoting: Reply Brief p 13:

"Mr. Wood, the jury foreman, was told I did not have questions about the jury members personally or what they thought or said about issues or evidence. I had only one question and it was entirely for the purpose of verification of what I knew to be true. Mr. Wood was told my beliefs that the jurors thought Beatrice Koker was on trial for "something" because of the errors revolving around the substance of the trial and the study of the facts. That it was believed by the appellant the jury considered me "guilty" because if a newspaper man can come objectively into a trial

courtroom and stay a short while and then ask waiting witnesses in the hall "why is that woman ON TRIAL?", the jury could not be immune to such an atmosphere of CONFUSION." "The inadequate verdict spoke volumes and the RECORD spoke for itself."

One question was asked the jury foreman by this petitioner:

"Did the jury think I was on trial and guilty of something? Was the jury CONFUSED and did not understand?"

The jury foreman was silent a long time from the shock of my question accurately expressed, then he OFFERED to go to the Court of Appeals to testify or whatever he could do to help.

Page 14 Reply Brief: Quoting:

"Mr. Wood dictated the affidavit statement to me. The statement was typed verbatim and read back to him. His sworn testimony is VERIFICATION OF THE TRUTH OF THE FACTS OF CONFUSION AND NOT UNDERSTANDING BY THE JURORS AS PROCLAIMED BY APPELLANT FROM BEGINNING TO END."

The subject of confusion was brought up in the appeal, the civil appeal statement, the opening brief and the reply brief was the proof of the confusion alleged from the beginning of the appeal. Yet the appellate court grasps as a technicality an old Supreme Court Rule citation case, ignores the court rules of waiver and interpretation Rule 1.2 and their power to raise new issues themselves.

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

Washington Court Rules RAP 1.2 states the cases and issues will not be determined on the basis of compliance or non compliance with the rules when justice is involved. Provisions of any of the rules may be waived or altered in order to serve the ends of justice.

The appellate court ignored this rule and used technicality to prevent justice on appeal.

RULE 1.2 INTERPRETATION AND WAIVER OF RULES BY COURT

(a) **Interpretation.** These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in Rule 18.8(b).

(b) **Words of Command.** Unless the context of the rule indicates otherwise: "Should" is used when referring to an act a party or counsel for a party is under an obligation to perform. The court will ordinarily impose sanctions if the act is not done within the time or in the manner specified. The word "must" is used in place of "should" if extending the time within which the act must be done is subject to the severe test under Rule 18.8(b) or to emphasize failure to perform the act in a timely way may result in more severe than usual sanctions. The word "will" or "may" is used when referring to an act of the appellate court. The word "shall" is used when referring to an act that is to be done by an entity other than the appellate court, a party, or counsel for a party.

(c) **Waiver.** The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in Rule 18.8(b) and (c).

The jury foreman affidavit proves the trier of the fact in the case at bar, was so confused it took approximately 2 hours to convince the jurors the petitioner-victim is not guilty.
(Appendix B-1)

The extent of the confusion is measured by the length of time of 2 hours to convince the jurors a "not guilty" verdict should be brought in for someone with injuries.

Fact: There is a confused jury.

Fact: Confusion of the jury is not a new issue in the reply brief.

Quoting From Reconsideration Document: P 16:

"The issue of confusion is not a new issue but has been an issue since the appeal was filed. Recurring throughout the briefs and papers submitted in appeal.

"The affidavit is "proof" of the old issue of confusion in trial."

"Please reconsider the jury foreman affidavit as proof of confusion of the trial and deliberations."

The Court of Appeals Div I used a mistaken premise for their technicality to deny justice that is due and overdue. Thus there is abuse of discretion in the decision on appeal and the refusal of the petition for review en banc and the denial of the reconsideration.

The cited case page 7 Appellate Court Decision has an unobtrusive footnote (2.) which I feel was overlooked in the appellate ruling about the jury foreman affidavit. The footnote clearly states an ISSUE NOT MENTIONED IN THE OPENING BRIEF OR CLEARLY STATES AN ISSUE THERE, cannot be considered in the reply brief. The technicality in the court's ruling is erroneous because the confusion was mentioned, clearly stated, from beginning to end of that appeal.

(STATEMENT OF THE CASE) PART II (CONT'D)

Appellate Court Decision: Page 6: Page 7:

WASHINGTON COURT RULES 1979 Page 336:

> **RULE 12.1 BASIS FOR DECISION**
>
> **(a) Generally.** Except as provided in section (b), the appellate court will decide a case only on the basis of issues set forth by the parties in their briefs.
>
> **(b) Issues Raised by the Court.** If the appellate court concludes that an issue which is not set forth in the briefs should be considered to properly decide a case, the court may notify the parties and give them an opportunity to present written argument on the issue raised by the court.

Rule 12.1 speaks of the Court of Appeals deciding cases on the basis of issues set forth by the parties in their BRIEFS. This is a plural reference. In fact, the rule allows the court of appeals to raise a new issue.

Contrary to this rule and rule 1.2 Waiver and Interpretation, the appellate court refused to recognize confusion of the jury because the affidavit of the jury foreman was in the reply brief.

The Court Rule 12.1 says "briefs" in plural form indicating justice of the case demands issues be raised even by the court itself.

Rule 1.2 is to promote justice on the merits. Proven deceit in a trial, prejudice from rulings indicated more definitely with conflict cases, untruths to the judge and jury, and others, all proven from the record is set aside with a prejudical wave of the judicial power of the Court of Appeals Division I.

Proven presentation of wrongdoing is just disregarded in setting aside the rules of the court and authorities and in spite of proven circumstances of an unfair trial, affirm the verdict of a confused jury.

STATEMENT OF THE CASE

PART III

REHEARING RULE ROA I-50 REPEALED

DESPERATE MOTIONS TO BE HEARD - - FAILED

STATEMENT OF THE CASE

PART IV

ORIGINAL RECORDS AND FILES WERE RELEASED FROM PROTECTION CUSTODY OF COURT OF APPEALS DIVISION I FOR 46 DAYS. THIS IS NEW ISSUE.

(STATEMENT OF THE CASE) PART III

REHEARING REPEALED:

A rehearing is the finality of the "day in court", and this rehearing was denied petitioner by the Washington State Supreme Court because the rehearing rule is repealed.

A search for a "hearing" to substitute by motion to present evidence-letter of imperative importance to the error of deceit ended in failure.

The mandate had not been issued but the petition for review was denied. A motion was submitted to the Court of Appeals Div I wherein the jurisdiction. Motions from Feb through June 1979 supplied by petitioner 3 copies to the appellate court and nine copies en banc to the State Supreme Court, so that no extra work was done by either state court in that respect.

The clerk of the appellate court returned the motion submitted containing the letter-evidence. An appeal to the judges was made, and the judges of the Court of Appeals ruled on that motion. Denied. The mandate had not been issued.

No word of the denial of the motion was sent to this petitioner until 7 days after the ruling. Then within 24 hours of the notification of denial of ruling, the mandate was issued estopping review of the motion.

(STATEMENT OF THE CASE) PART III (CONT'D)

REHEARING REPEALED: (Cont'd)

The right to be heard in due process of law annihilated with repeal of rehearing. The right to be heard to ask for review of a denied motion estopped by premature issuance of the mandate.

A motion to recall the mandate was submitted to the Court of Appeals Div I and the motion disappeared.

At the closing portion of the 30 days in which a mandate becomes final, petitioner went to the appellate court to protect her rights. If the mandate is final in 30 days and no ruling by the court, the question of recall could become moot.

The clerk of the appellate court did not look at my motion but refused to docket the motion. My query then was as to the whereabouts of the motion, was met with: "The mandate is final," accompanied by a gentle fist on the counter in rhythm to the words.

I asked if the judges had the motion and if the motion had been ruled upon or where it was. The answer: "The mandate is final," and the fist accompanying rhythm again on the counter. The question was asked how a mandate is final when there is a pending motion. The same answer and gestures.

REHEARING REPEALED: (CONT'D)

A woman of pride does not bother people. So with a refused-to-docket-motion, and no information as to the whereabouts of a mandate recall motion, the petitioner left quietly.

A journey was made to the State Supreme Court in desperation, to ask for help and to lift the case out of the appellate court under rule 4.3. The Supreme Court located the recall of the mandate motion immediately.

Why would the Clerk of the Court of Appeals refuse to answer my polite questions as to the standing of the recall motion?

This clerk had never been rude. He is a gentleman, polite and kind up until the time for rehearing and the repeal of that constitutional right. The motions that followed in an attempt to be "heard" left kindness amiss. The repeal of the rehearing must be responsible some way, but I do not know how.

Recall of the mandate denied by the Court of Appeals Div I. Discretionary review allowed by the State Supreme Court who knew of the separate desperation journeys to their court for help because there was "no freedom to act" "no place to turn."

Appendix A-12(a)(b) and A-13 and A-13(a) indicates the futile attempt to get the Supreme Court the letter evidence.

REHEARING REPEALED: (Cont'd)

The State Supreme Court removed my right to rehearing, and even denied me "hearing" in a motion of vital evidence of deceit.

The discretionary review denied by the commissioner on a technicality and the Supreme Court denied to modify. All ruling asked en banc for the letter-evidence as the deceit error 3(A) was ruled en banc in the petition for review.

There was no en banc ruling in the motions. No rehearing. No hearing.

From the experience in the "motion era" from February 1979 until June 1979, there was a discrimination felt not encountered before on appeal. I do not want to be pro se but there is no other way. The expense would be prohibitive.

Ironic:

The state appellate structure denies the right to a rehearing, and then the State of Washington Constitution supplies the jurisdiction to the United States Supreme Court under Article 4 §2 for such an action. (Aforementioned and cited)

(STATEMENT OF THE CASE) PART IV

NEW ISSUE RELEASED ORIGINAL FILES:

The original records, papers, exhibits, the entire original file under the protective-custody-jurisdiction of the State Supreme Court was released from that court. The Clerk of that court assumed they were still in state supreme court as per the memo of Appendix A-16:

The Court of Appeals Division I had the records and released the entire file #4916-I "under color of law" to the adversary of this petitioner in a civil action. A copy of the pending appeal to the United States Supreme Court had been sent to the appellate court certified mail so they had knowledge.

Peitioner asked that the original file be called in immediately. In answer, the Court of Appeals extended the time 12 more days to keep the original files. 46 days out of there jurisdiction to that point.

The records are now back in the State Supreme Court. A motion was sent to have the records and file recertified but the motion was filed and no action is to be taken until the jurisdictional statement is acted upon. I respectfully ask the Supreme Court to honor the new issue if this is possible as releasing original records on a pending appeal is a constitutional question as aforementioned in this document.

Statement Of Case PART IV
"New Issue" "Original Record)

FEDERAL QUESTION I . . . . .

Unfair Trial

FEDERAL QUESTION II . . . . .

Rehearing Repealed

FEDERAL QUESTION III . . . . .

Original Records Released
New Issue

GROUNDS UPON WHICH FEDERAL QUESTIONS ARE SUBSTANTIAL

(SUBSTANTIAL FEDERAL QUESTIONS)

Federal Question I: UNFAIR TRIAL

This is a personal injury, defense admitted liability case and deceit, umtruths, misleadimg the jury, concealment, fraud of the court, by the quasi-judicial officers of that courtroom.

The Federal Questions are substantial. What branch of the judicial system has as much influence to maintain a fair trial, and justice in the courts than attorneys? The public thinks of a courtroom and the immediate correlation is "judge" "jury" "attorney" "to tell the truth, the whole truth and nothing but the truth."

The late Honorable Mr. Justice Jackson, concurring in Hickman v Taylor 329 U.S. 514, 515 says:

> "But it is too often overlooked that the lawyers and the law office are indispensable parts of our administration of justice . . The welfare and tone of the legal profession is therefore of prime consequence to society."

The abuse of discretion by the trial court judge in rulings may have been prompted by his lack of investigation of fact-facts and also common-sense-facts. The trial court judge trusted the attorneys of record for complete truth, honor, honesty, integrity of their profession and to uphold the law of the land and the dignity of the court and respect.

Federal Question I: UNFAIR TRIAL (Cont'd)

The record shows confusion and disorganization, and hesitancy on the part of the judge, and close ties of the attorneys in trial.

RP VOL II p 164/18-19-20: The Judge Speaking:

> "My memory is that that was the time when there was some deal of confusion and we weren't clear what reports of Dr. Sata indeed went to Dr. Freidinger."

The confusion and disorganization occurred at RP VOL II p 133/3-4: The Judge Speaking:

> "Members of the jury, I am going to excuse you until counsel can get themselves organized."

The judge denied a defense motion and said to both defense and plaintiff attorney: RP VOL II p 93/7-14:

> "I don't know how this case operated. It looks to me it was very informally handled between counsel, you know each other and so forth."

PART II Statement Of The Case holds the errors in the trial. Both attorneys are involved. (The defense attorney and plaintiff attorney.)

Cont'd

Federal Question I: UNFAIR TRIAL (Cont'd)

The trial ended without anyone knowing of the deceit and wrongdoing except the wrongdoers.

A motion for new trial or in the alternative additur was made under rule CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9)

The Ruling: Trial Court

The primary question presented by motion for new trial is whether there has been a fair trial. LeVea v G. A. Gray Corp (1977) 17 Wash App 214, 562 P 2d 1276.

Quoting Headnote (8): New Trial - - Determination - - Review - - Trial Conduct

> "A motion for new trial requires a determination of whether or not the moving party had a fair trial. When such a motion involves assessing events occurring during trial and their potential effect on the jury, the reviewing court will accord considerable weight to the trial court's determination."

BUT THE JURY WAS SO CONFUSED IT TOOK THE JURY FOREMAN APPROXIMATELY 2 HOURS TO CONVINCE THE JURORS THE VICTIM OF PERMANENT PERSONAL INJURIES WAS "NOT GUILTY." THE JUDGE DID NOT KNOW! See: Appendix B-1: HOW COULD A JUDGE ASSESS EVENTS IN TRIAL WHEN DECEIT IS PRESENT?

Federal Question I: UNFAIR TRIAL (Cont'd)

The trial court denied the motion for new trial or additur, reluctantly, with misgivings, the Judge did not like the verdict. But in denying the motion, he ruled upon the Federal Question I.

The Ruling: Court Of Appeals Division I

The Federal Question of "unfair trial" was raised in the appellate court by the appeal of denial of motion for new trial or additur, inadequate damages via assignment of errors, new issues for review. The appellate court AFFIRMED the decision of the trial court.

The abuse of discretion in the appellate court is that the Honorable Judges were informed of the deceit and wrongful acts in a court of law with proof from the record. The decision from that court held technicalities which penalized the litigant-victim, saying in essence a trial filled with deceit is a fair trial. Ignored court rules and authorities.

The appellate court KNEW that the trial court DID NOT KNOW of the deceit during the trial proceedings and why he didn't know. Investigation of facts that should have alerted him to suspicion, were waylaid by trust of the attorneys he had every right to trust. NOT TO BLINDLY TRUST THE ATTORNEYS WITHOUT FINDING INVESTIGATIVE FACTS. The first paragraph p 5 appellate court decision said this trial was fair.

(SUBSTANTIAL FEDERAL QUESTION) CONT'D

Federal Question I: UNFAIR TRIAL (Cont'd)

The Ruling: Washington State Supreme Court

The state supreme court denied the petition for review en banc, upholding a confused jury and a deceitful trial, ignoring court rules and conflict authorities and did not use the extraordinary powers entrusted to the court for redress, remedy, justice.

This petitioner is being victimized by allowing the decision of the appellate court upholding the trial court affirmed, when the power of the supreme court of the state is to preserve justice, protect justice, remand for justice, and waiver any rule for the sake of justice of the case.

The appellate court and supreme court of the State of Washington knew of the reported wrongdoings from the record, and the obvious proof there could never be a fair trial in those circumstances.

There was additional proof from a jury foreman in affidavit proving not only confusion of the jury but the EXTENT OF THE CONFUSION!

The state appellate courts could not have reached their decisions without either tacitly or expressly deciding a Federal matter of a fair trial. This is not a local law case, this is denial of a federal right to a fair trial in a meaningful way according to the Constitution.

Cont'd

Federal Question I: "UNFAIR TRIAL" Cont'd

|| Citation || CONSTITUTION OF THE UNITED STATES AMENDMENT 14 Citizens Of United States Note 20 p 59

"Judicial action in private disputes is a form of state action required for application of this clause prohibiting state from abridging the privileges and immunities of citizens."

Hosey v Club Van Cortlandt 299 F Supp (1969) D.C.N.Y. Appeal: 28 U.S.C.A. 1257(3)

Procedural Due Process:

Procedural due process is needed, expected, demanded in even small claims courts. The Fourteenth Amendment of the United States Constitution guaranty of fundamental fairness and due process is applicable to all proceedings irrespective of whether they are denominated criminal or civil, if the outcome may be the deprivation of a person's liberty. Procedural due process is not only when some vested right is being impaired. CONSTITUTION Amendment 14 Note 551 p 414

"Touchstones of procedural due process are fairness and reasonableness." CONSTITUTION Amendment 14 Note 855 p 649 Clutchette v Procunier D. C. Cal (1971) 328 F Supp 767

Federal Question I: "UNFAIR TRIAL" Cont'd

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED Due Process Of Law Amendment 14 Note 123 p 220

"Test as to whether a party has been afforded procedural due process is one of fundamental fairness in the light of total circumstances."

* Watson v Patterson 358 F 2d 297 (1966)
* Whitfield v Simpson 312 F Supp 889 (1970
* Buttny v Smiley 281 F. Supp 280 (1968)

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED Due Process Of Law Amendment 14 Note 123 p 220

"Due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by that whole community sense of decency and fairness that has been woven by common experience into the fabric of acceptable conduct."

Breithaupt v Abram N. M. (1957) 77 S. Ct 408, 352 U. S. 432, 1 L ed 2d 448

Note 123 p 220: "This cause eacts from the states a conception of fundamental justice." Shields v Beto C. A. Tex (1967) 370 F 2d 1003

Note 123 p 220: "Denial of due process" is conduct that shocks conscience and offends sense of justice." Buder v Bell C. A. Mich (1962) 306 F 2d 71

Federal Question I: "UNFAIR TRIAL" Cont'd

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED Due Process Of Law Amendment 14 Note 123 p 220

"Guarantee of this amendment is not that just result shall have been obtained, but that result, whatever it may be, shall have been reached in a fair way." Mounts v Boles C. A. W. Va (1963) 326 F 2d 186

Note 634: "Due process challenged, in order to be upheld, must demonstrate such fundamental unfairness as to preclude possibility of a fair trial." Landers v Smith (1970) 174 SE 2d 427, 226 Ga 274

[Citation] 3C Wash D 474 Wests Key 319 CONSTITUTIONAL LAW Right To Justice And Remedies For Injuries

"Duties imposed upon the Supreme Court, the Court of Appeals and Superior Courts under the Constitution include, among others, the fair and impartial administration of justice and the duty to see that justice is done in cases that come before them." RCWA Const. Art. 4, §1; Art 4 § 30, as amended Amend. 50 Iverson v Marine Bancorporation 517 P 2d 197, 83 Wash 2d 163 (1973)

Federal Question II: "NO REHEARING"

Rehearing Rule ROA I-50 repealed and this is repugnant to the Constitution of the United States and the Constitution of the State of Washington. See: Appendix A-7:

This appeal is pursuant to 28 U.S.C.A. 1257(3) and the Constitution Of The United States. The following citation provides the jurisdiction for the United States Supreme Court Federal Question II:

|| Citation || CONSTITUTION OF THE STATE OF WASHINGTON Art. 4, §2 p 335

Art. 4, § 2 CONSTITUTION OF WASHINGTON

Under 28 USC § 1257, restricting United States Supreme Court's review of state decisions to judgments rendered "by the highest court of a state in which a decision could be had," judgment rendered by Department One of Supreme Court of Washington is reviewable in United States Supreme Court, where rehearing en banc before Washington Supreme Court is not granted as matter of right, Washington Constitution and Statutes authorize its supreme court to sit in two Departments, each of which is empowered to hear and determine causes on all questions arising therein, cases coming before court may be assigned to Department or to court en banc at discretion of Chief Justice and specified number of other members of court, and decision of Department becomes final judgment of Washington Supreme Court unless within specified time petition for hearing has been filed or rehearing has been ordered on court's own initiative. Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers v Lucas Flour Co. (1962) 369 US 95, 7 L ed 2d 593, 82 S Ct 571.

Federal Question II: "NO REHEARING" Cont'd

The denial of rehearing is an independent ground for review under this court's power to supervise the administration of justice in federal courts under the doctrine in:
Western Pac Corp v Western Pac R Co
345 U. S. 247, 260

THERE IS A CONSTITUTIONAL ISSUE IN THE FEDERAL QUESTIONS I AND II.

|| Citation || UNITED STATES CONSTITUTION
West's Pacific Digest Vol 8 p 421 XII
West's Key 321 Constitutional Guaranties
In General:

"Defendants "day in court" is not complete until his motion for rehearing before the Supreme Court is determined." State V Pudman
177 P 2d 376, 65 Ariz 197

Claim:

This petitioner claims that the state regulation is inconsistent with federal law and poses a constitutional issue under USCA CONST. Art 6, §2 jurisdictionally cognizable under this section in repealing ROA I-50 - Rehearing in the State of Washington.

Federal Question II: "NO REHEARING" Cont'd

|| Citation || UNITED STATES CODE ANNOTATED

ARTICLE III 6, cl. 2 p 723 Note 4

"Where state and federal statutes are in conflict, federal law must prevail." In re Sheptaw's Estate(1959) 343 P 2d 740, 54 Wash 2d 602

|| Citation || JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES (TREATISE) Robertson and Kirkham Part 1 Ch 2 p 12 §7

Quoting from: Hamilton v Regents of Univ of Calif 293 U. S. 245,257,258, 55 S. Ct. 197, 79 L Ed 343:

"Any enactment, from whatever source originating, to which a State gives the force of law is a statute of the State, within the meaning of the clause cited related to the Jurisdiction of this court." Williams v Bruffy 96 U. S. 594, 603, 24 L Ed 1018

|| Citation || MODERN CONSTITUTIONAL LAW §7 p 14 "ONE'S DAY IN COURT"

"The United States Supreme Court has referred to "the right to be heard" as "one of the most fundamental requisites of due process." Again, it has stated: "A fundamental requirement of due process is the opportunity to be heard." Armstron v Manzo (1965) 380 U. S. 545, 14 L Ed 2d 62, 85 S. Ct. 1187

Federal Question II: "NO REHEARING' Cont'd

"In Saunders v Shaw 214 U. S. 137, 37 S. Ct 638, 61 L Ed 1163, it was held that where it is the act of the state supreme court itself done in its opinion and decision and coming unexpectedly at the end of the proceeding when appellant no longer had any opportunity to add to the record, which denies appellant a federal right, and thus, for the first time imports into the case the federal question sought to be reviewed, a raising of the question for the first time in the assignment of errors accompanying a writ of error (now appeal) to the Supreme Court will be deemed to be timely."

NO REHEARING:

There were two reasons to have rehearing for this petitioner. (a) To review and rehear the entire case of an unfair trial, (b) there was found letter-evidence imperative to deceit in the trial which never could be put in for rehearing Error 3(a) which had been heard en banc in petition for review. This denial of rehearing because of the repeal of ROA I-50 came at the end of the proceedings of appeal in the State of Washington, and unexpectedly and there was no way to add to the record and that is the denial of a federal right. And timely raised herein. Appendix A-7 is a letter from the State Supreme Court Clerk saying ROA I-50 "rehearing" had been repealed and no further procedures are available under the rules and no additional pleadings would be considered. THIS IS A FEDERAL QUESTION.

Federal Question II: "NO REHEARING'(Cont'd)

(1) As per quoted from Hamilton v Regents supra, any enactment from whatever source originating, to which a State gives the force of law is a statute of the State.

(2) Rehearing is abolished by repeal, and has the force of law. Whether a state statute violates the federal constitution involves a federal question and gives the federal court jurisdiction." Risley v City of Utica C. C. N. Y. (1909) 173 F 502

(3) When there is an unavoidable conflict between the Federal and state, the supremacy clause of course controls. Reynolds v Sims 377 U. S. 533, 584 (1964)

(4) A denial of due process cannot be justified by a state on any adequate nonfederal ground. Edelman v California 344 U.S. 357 73 S. Ct. 293, 97 L. Ed 387

(5) A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government. The Constitution Of The State Of Washington RCW VOLUME 0 p 6 §32 FUNDAMENTAL PRINCIPLES

Federal Question III: "ORIGINAL RECORDS"

The original record on appeal in state appellate courts #4916-I was released out of the custody and jurisdiction of the Court of Appeals Division I, five days after the final decision in Washington State Supreme Court.

There was an appeal filed to the United States Supreme Court August 7, 1979. On that date the Clerk of the State Supreme Court verified the original records were in his court. Appendix A-16: Memorandum from Deputy of Federal District Court.

There is a pending appeal to the United States Supreme Court of which the Court of Appeals was aware having been sent a copy of the appeal certified mail.

There is a pending civil action against the very person to whom the original file was released, with a courtesy extension of 12 days time.

Petitioner made discovery her original file was "missing' when personnel in the Court of Appeals Division I could not find the file to xerox one document needed.

The entire file had been released 41 days and was not docketed until September 10 or 11, 1979! Appendix A-17(a)(b)

[SUBSTANTIAL FEDERAL QUESTION] CONT'D

Federal Question III: "ORIGINAL RECORDS"

The federal question herein concerns certification of the original file for appeal to the United States Supreme Court. It is understandable under the circumstances to want this done before further problem could happen. The original report of proceedings are needed for the civil case.

A motion for Special Accelerated Proceedings was submitted under rules to go to the judges only. The Clerk of the State Supreme Court filed the motion and "shelved" the action upon it, thus preventing sanctions and terms for the "act under color of law" in regard to the lack of protection of my records. Appendix A-18(a)(b) First two pages of motion. Appendix A-23 Reply from the Clerk of the State Supreme Court. Appendix A-24: Petitioner's motion to reactivate first motion. Reasons.

The Jurisdiction of this Federal Question III belongs in the United States Supreme Court because the release of an original file directly affects the appeal to your court. The recertification must be done to your satisfaction. The Supreme Court Clerk cannot now certify these records to have been in his jurisdiction since the original filing.

The jurisdiction is sought pursuant to
42 U.S.C.A. 1983 42 U.S.C.A. 1984
42 U.S.C.A. 1985 28 U.S.C.A. 1343
28 U.S.C.A. 1738 28 U.S.C.A. Rule 1

[SUBSTANTIAL FEDERAL QUESTION] CONT'D

Federal Question III: "ORIGINAL RECORDS"

Federal Question III is a NEW ISSUE in this appeal and directly affects this appeal. I respectfully ask the United States Supreme Court to take whatever action necessary if recertification fails.

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED AMENDMENT 14 Citizens Of The United States Note 9 p 52

"The privileges and immunities of 42 USCA §1983 rendering liable a person who under color of law subjects a person to deprivation of privileges or immunities secured by Federal Constitution are the privileges and immunities of Art. 4, §2, cl. 1, and of this amendment." Valle v Stengel C.A.N.J (1949) 176 F 2d 697

[Citation] CONSTITUTION OF THE UNITED STATES ANNOTATED AMENDMENT 14 Citizens Of The United States Note 11 p 55

"This amendment governs any action of a state whether through its legislature, through its courts, or through its executive or administrative officers." Voight v Webb D. C. Wash. (1942)
Not 11 p 55

Federal Question III: "ORIGINAL RECORDS"

(1) 28 U.S.C.A. 1738 Note 25 indicates that any court receiving a certified record does not even have to ask if the clerk of the supreme court or the clerk of the appellate court has had custody of the original files since it was filed. That fact is assumed because the rule is so stringent files are not released unless the court so orders.

(2) It has been recognized that 18 U.S.C.A. §1503 protects not only court proceedings, but such proceedings as preliminary hearings and grand jury investigations as well, since the latter-mentioned or proceedings serve as an extension of the court. Thus, the "due administration of justice" can begin at the earliest, with the filing of the complaint, and it does not end, at the latest, until the final disposition of the last appeal. Obstructive action taken at any point in between, even while there is no judicial proceedings, actually in progress, is punishable, since the matter would still be pending.

(3) The trial in the case at bar was conducted in so highly a prejudical manner as to amount to denial of due process, so deceitful as to qualify to set aside the verdict. Citron v Aro Corp 377 F 2d 750 certiorari denied, 88 S. Ct. 473, 389 U.S. 973, 19 L Ed 2d 466. Remanded for new trial.

SUBSTANTIAL GROUNDS: "Public Interest" "Constitutional"

A fair trial is public concern and interest because of the "long arm protection" of the United States Constitution as a personal birthright for each American.

An unfair trial is public concern and interest because there is outrage that such a trial could happen in the first place, and any unfair trial is a personal insult even when it happens to someone else because we all share the same inherent right to a foregone conclusion from birth in every family - fair trial.

There is public doubt and disrespect of the validity of the jury system when a jury becomes so confused from a disorganized, deceitful, untruths-in-trial, the jurors have to be convinced approximately 2 hours that the accident victim is not guilty!

Only when a trial is the soul of fairness can that trial be truly the soul of reason and acceptable to people.

Could this deceit destroy justice? Both the defense and plaintiff attorneys knew a doctor changed his medical report in a deposition. The defense attorney read the original medical report as bonafide when in fact he knew the medical report was changed.

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

The plaintiff attorney listened, objected, was overruled and had a duty to speak of the deceit and kept silent acquiescing to protecting a colleague and deserting his client.

What did the doctor change in his deposition? Page 22 and 23 Deposition

The Doctor: "You know, as I look at my impression from which you are asking me the questions, I realize that I probably expressed this impression without too much thought."

Deposition p 25/23-24-25: p 26/1-2:

The Doctor: "- - I am simply trying to clarify my thoughts regarding this patient. I have no axe to grind and I don't feel that I have to be held to any report that I submitted if I don't think this is proper at this time."

Limbo Land:

The deceit of the changed medical report read as bonafide was not intended to be discovered. A wrong committed. A silence to cover it up. Discovery by petitioner of the deceit was unintentional while the presentation of "everything out in the open" on appeal.

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

Petitioner's understanding was accurate from a telephone conversation from her then-attorney who said a deposition had been held and there was nothing "for me" in the deposition. Thus, portraying an adverse deposition.

In honesty, the deposition was located with difficulty as not having been transcribed. Approximately $109. was borrowed and the deposition was transcribed.

Comparing the report of proceedings with the deposition, revealed proof of deceit in a court of law, misleading the jury, misrepresentation of fact and suppression of fact, concealment from the judge, jury and the litigants.

The deposition was submitted to the appeal as Error 3(a) and a prior new issue. The deposition was said to be the "vessel of proof" of the deceit which is the newly discovered evidence.

Would public trust in the courts ever accept deceit in a court of law. "The truth, the whole truth, and nothing but the truth" is synonymous with "court trial" "courtroom".

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

PART II Statement of the Case holds further proof of the tenure of the trial. The mental status attacks upon this petitioner is humiliating, embarrassing, heartache to a woman of pride, integrity and a sense of honor and decency.

The public interest extended to a psychiatrist and also a former member of the mayor's office which status is now "retired." See: Appendix A-22

PEOPLE CARE. The public interest extends to a donated typewriter to complete the Jurisdictional Statement. Another member of the "public" has cut all of the paper in this document to size. A local typewriter shop has allowed me to charge the typewriter ribbons, others help with the xeroxing and correlating.

The money for this appeal and all other appeals to date is loaned by members of the "public".

A fair trial is the foremost concept of our heritage of a sacred court of law, with the unsullied sanctity of the jury to settle disputes and lives.

The jury is guaranteed to have absolute sanctity of their function-search to justice. To intercept the purpose of a jury, is to intrude upon the public right to the security

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

OF Constitutional protection. The jury in the case at bar were good and sincere people. Their "public interest" in a fair trial was to serve on a jury when called. This petitioner has asked an apology for that jury on the grounds of confusion and untruths in the proceedings in a court of law which caused misconception of the law, not considering all elements of damage involved, disregarding the weight and preponderance of the evidence, missing consideration of issues, then failing to follow instructions given by the Court.

To falsify the trial is to falsify the meaning of the Constitution. To lie to a jury is to ban the foundation of truth to which a jury is committed by law.

The Court of Appeals Division I had the power and from the record, the proof, to set aside the wrongful verdict and award a new trial.

The appellate court allowed the verdict to stand and created a monument to injustice.

The "public" looks to the appellate courts as the sentry-guard of justice, thereby being the Constitutional added protection to a fair trial.

Citizens do not understand the law as a lay person, nor the procedure of the courtroom and are there in complete trust

SUBSTANTIAL GROUNDS: "Public Interest"
"Constitutional"

and reliance upon the Constitution which allows nothing but a fair trial as a matter of right.

A public doubt of justice is created wherein there is forfeit of trust and reliance in the trial court by the quasi judicial officers of the court, lack of prevention by the judge of the court, the encounter with word of the result of a confused jury, affirmance of the wrong in the appellate court and denial to review by the highest court of the state.

The "public interest and concern" in such a situation revolves around the human premise of: "If it happened to her, it could happen to me, it could happen to anyone."

"Public interest" has given me the courage to appeal alone. This is a very special kind of case. Even though I pray herein for relief of the judgment and appeal from state courts and reversal for trial or additur, it is also hoped this petitioner's plight will focus this court's attention on the public menace of my personal situation in an unfair trial.

I pray the rectifying of this unfair trial will serve a precedent, for then this judicial ordeal will have served a purpose in the anguish.

SUBSTANTIAL GROUNDS: "Right To Be Heard"
"No One To Listen"

Federal Question II, the repeal of the rehearing in the State of Washington, which is a ruling repugnant to the Constitution of the United States in which the "day in court" is not complete until the final rehearing before the Supreme Court.

The denial of rehearing became a dilemna in which there is a "right to be heard" and there is "no one to listen."

SUBSTANTIAL GROUNDS: "Original Records"

Substantial grounds for this as a new issue before the United States Supreme Court involves the certification of the original file records for this appeal.

The subject matter of new issue is within the jurisdiction of the highest court in America in a pending appeal. Without the certification of the records, what will you have to consider?

Please weigh carefully what probable reason there could be for releasing the original file for 46 days into the possession of an adversary in a civil action, and thereby ruining the certification of an evidentiary pleading-complaint based upon the Original report of proceedings.

SUBSTANTIAL GROUNDS: "Motion Shelved"

A motion to review wrongdoing under the color of law, and to recertify the original records released from the appellate court, was filed and shelved without further action by the Clerk of the Supreme Court. Appendix-A-23:

By law, the motion must be docketed but to set the motion aside without action is just another technicality and is equivalent to not docketing at all.

The hopeful concensus without doubt, is that the petitioner's Jurisdictional Statement will be refused by the United States Supreme Court and those acting "under color of law" will escape sanctions and terms.

The implication being that it does not matter what wrong is committed with the original files released against the constitutional rights of a litigant pro se, as long as the United States Court does not consider the appeal.

I respectfully ask your reflection upon an unfair trial in a court of law in deceit, a confused jury, proven from the record facts that cannot uphold a jury verdict. The appeal which should have overturned the denial of motion for new trial or additur by trial court because of abuse of discretion by the court, merely affirmed an act of injustice. Instead of redress and remedy through the court-of-last resort in the state in petition for review, that too was denied en banc.

SUBSTANTIAL GROUNDS: "Motion Shelved"

The rehearing is abolished in this state denying a constitutional right, and then the imperative evidence to be submitted was rejected in motions and review. And even after the last echo of "denied", the original files have been confiscated "under color of law".

Justice must not be controlled and repressed in this chain reaction of injustice. The trial and appeal in the case at bar and the circumstances therein are a precedent and have worked havoc and anguish.

This repugnant trial and appeal and "under color of law" acts cannot stand as an example of justice in the courts.

Apart from the denial of individual rights of this petitioner, which is the purpose of this appeal, there is also the public policy of individual rights with this petitioner Beatrice Koker the example of what can and did happen.

|| Citation ||

"Policy of finality is, and should be strong, but in the face of unusual factors, equitable principles encompassed within rule justify further inquiry." Bros Incorporated v W. E. Grave Manufacturing Company 320 F 2d 594 (1963) Headnote 28: Wests Key 2648

CONCLUSION

CONCLUSION:

The Jurisdiction of the United States Supreme Court is respectfully asked by this petitioner, on the basis of the reasons aformentioned throughout this document, and for future briefs on the merits for the resolution of this appeal.

There is conversational overtones from those porported to know, the percentage of appeals accepted by the United States Supreme Court is so remote, the states are not concerned about state rulings being questioned.

That fact, if true, gives considerable power-monopoly to state courts. The fact was also pointed out, that this petitioner is only one person, one trial, one injustice, and the Indians, the fishermen, the classes of people with problems are more priority than one middle-aged woman waging an agonized appeal alone.

There are young people watching legal actions by what they call the "system." The young people consider me in a futility appeal because of the "system."

Petitioner is for the system and that is one reason to fight to preserve the system so that it is possible to edify the freedom and justice as a fact and not just a "preaching with no practice" phrases of constitutional promises.

CONCLUSION: (Cont'd)

Petitioner is floundering in the law books in a first-aid room in a Courthouse, trying to decipher statutes and authorities and selecting xeroxing to be done to study at home. Typing is done with nine fingers, 15 minutes at a time only, because of the cervical injury.

Why would a woman with pain and physical problems and having to borrow money to fight for justice carry on this battle alone?

Justice. The Constitution of the United States is an anchor to cling to amid all the injustice and heartache.

There is an unfair trial with a proven confused jury and deceit and untruthfulness remains on the record as a monument of destruction to justice in a court of law.

Added to an unfair trial, there is then a repeal of rehearing to the State Supreme Court, and further obstruction of justice. Then "under color of law" more rights are taken in blatent disregard of the rights of a citizen and my entire original file #4916-I is released from the custody of the Court of Appeals, even extending the time of the denial of my rights!

Therefore, I am here before you.

CONCLUSION:

Another Kind Of Law:

The Golden Rule from the Bible:
Matthew VII.12

> "Therefore all things whatsoever ye would that men should do to you, do ye even so to them: For this is the law and the prophets."

The Last Years Most Precious:

Those who are young, seemingly think only the old die and the young never become old. Then in reality, the years pass and the young become older and suddenly the last years become the most precious, where none know which decade will be the last.

This petitioner cannot grow old gracefully into middle age and old age. Instead, there is pain and crippledness, struggle and heartache, and gross injustice left to be my lot in life because of the negligence and wrongful acts and decisions of others.

The Last Plea For Justice:

This appeal is not a battlement of "legal" against "pro se". There is no winning and no losing for the petitioner. What could I win? No one can restore the use of my legs and undo the physical

CONCLUSION:

injuries elsewhere. What could I lose? There is nothing more to take from me to sacrifice to injustice.

Representation:

If a new trial be awarded, this petitioner has representation.

Additur:

If a new trial is not awarded, may there then be an alternative additur based upon the focal point of what the Court of Appeals Division I, State of Washington ruled to be a "sensible award" for a drop foot injury from the case of Ryan v Westgard 12 Wash App 500 (1975) supra.

Alone Together:

Although this case involves only one individual and her damages, the federal questions and the constitutional questions presented by this case are imperative to the well-being of every citizen of the United States of America who could stand in the shoes-of-injustice of this petitioner.

CONCLUSION:

I respectfully ask the United States Supreme Court to recognize jurisdiction and accept jurisidction of this appeal. The Federal questions presented are substantial concerning an unfair trial, denial of rehearing because Rule ROA I-50 is repealed, thus preventing due process to be heard, and the new issue "under color of law" which is the release of original records and file in a pending appeal.

Our Heritage Two Ways:

Petitioners age is 58. My life since June 4, 1971 is living with injuries and pain and far-reaching repercussions of permanent injuries. Life is a future without a future. The added burdens of litigation pro se is a continuity of rejection.

It would be so humanly simple and easy to give up in all ways and remain so until the grim reaper comes to harvest. But the redundantcy of the inner spirit is an infallible endurance through faith and courage.

We have a double heritage: The Day will come when I will stand in the Jurisdiction of The Highest Court before a Preassigned Judge, and Eternal Justice will be There.

But here and now, I am standing before the Highest Court of the Land respectfully asking for Jurisdiction and Justice.

Respectfully submitted,
Beatrice E. Koker
Beatrice E. Koker, pro se
939 - North 105th Street
Seattle, Washington 98133
(206)783-6998

IN THE

SUPREME COURT OF THE UNITED STATES

TERM 1979

NO. 79-776

ERICH KOKER and BEATRICE E. KOKER, husband and wife,
Plaintiff/Appellant/Petitioner,

V

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, Jr.

Defendants,
Respondents,

A-P-P-E-N-D-I-X

JURISDICTIONAL STATEMENT

Appeal From State Of Washington

State Supreme Court #45846 and 46169
Court Of Appeals Division I #4916-I

Appeal: . . . . . Appendix A-15(a)(b)
Extension Of Time: Appendix A-15(c)(d)

Pro Se

Beatrice E. Koker
939 - North 105th
St. Seattle, Wash.
(206) 783-6998

I N D E X

APPENDIX: FIRST SECTION: (July 29, 1976) (February 1979)

APPENDIX: SECOND SECTION: (February 1979) (July 20, 1979)

I N D E X

APPENDIX: THIRD SECTION:

II Citation II See: Page 92 Herein Second Citation

Reference: Chicago B & Q R. Co V Chicago
166 U.S. 226, 246:

Graham v Gill,
223 U. S. 643, 645:

I N D E X

APPENDIX: FOURTH SECTION:

End B-12

A P P E N D I X

A P P E N D I X

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

ERICH KOKER and BEATRICE KOKER, husband and wife,

Plaintiffs,

v.

NOEL B. SAGE and WINETTA SAGE, husband and wife; and NOEL B. SAGE, JR.,

Defendants.

No. 773620

VERDICT

DEPT. 22

121119
ACKNOWLEDGMENT NUMBER

We, the jury, find for the plaintiffs

in the sum of $ 4600.00

Stephen M Lund
FOREMAN

FILED
'76 JUN 16 AM 9:17
KING COUNTY, WA

VOL 689 PAGE 391

40

Appendix A-1

FILED

'76 JUN 17 PM 1:35

BETTY M. GOULLEN
CLERK
KING COUNTY WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

ERICK KOKER and BEATRICE E. KOKER, husband and wife,

Plaintiffs,

vs.

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,

Defendants.

NO. 773620

MOTION FOR NEW TRIAL OR IN THE ALTERNATIVE FOR ADDITUR

Come now the plaintiffs and move that they be granted a new trial on the following grounds:

1. Irregularity in the proceedings of the court, jury and adverse party, order of the court and abuse of discretion by which such parties were prevented from having a fair trial;

2. Misconduct of the prevailing parties and jury;

3. Accident or surprise which ordinary prudence could not have guarded against;

4. Newly discovered evidence material to the plaintiffs which could not with reasonable diligence have been discovered and produced at the trial;

5. Damages so inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

6. Error in the assessment of amount of recovery in that it is inadequate;

7. That there is no evidence or reasonable inference from the evidence to justify the verdict and that it is contrary

LAW OFFICES
SHEEL, MCKELVY, HESSE, EVENSON & BETTS
6TH FLOOR
900 FOURTH AVENUE
SEATTLE, WASHINGTON 98164

41

Appendix A-2

to law.

8. Error in law occurring at the trial and excepted to at the time by the parties making this application.

9. That substantial justice has not been done.

FURTHER, without waiving the foregoing motion but expressly relying thereon, the plaintiffs move for additur.

DATED this 16th day of June, 1976.

SKEEL, McKELVY, HENKE, EVENSON & BETTS

By _____
FREDERICK V. BETTS
Attorneys for Plaintiffs

MOTION FOR NEW TRIAL OR IN ALTERNATIVE FOR ADDITUR.
2.

LAW OFFICES
SKEEL, McKELVY, HENKE, EVENSON & BETTS
40TH FLOOR
900 FOURTH AVENUE
SEATTLE, WASHINGTON 98164

appendix A-2(a)

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Plaintiffs,

v.

NOEL B. SAGE and WILMETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,

Defendants.

NO. 773620

NOTICE OF APPEAL TO COURT OF APPEALS

July 29, 1976

ERICH KOKER and BEATRICE E. KOKER, plaintiffs seek review by the designated appellate court of the entry of the judgement and denial of plaintiffs Motion for New Trial or in the Alternative for Additur on June 30, 1976.

A leg brace must be worn the rest of plaintiff Beatrice E. Koker's life. Permanent injuries are proven through testimony of doctors and through the Electromyogram Tests by Dr. Anders E. Sola.(Dr. Rothstein, Dr. Klemperer, Dr. Leavitt or Dr. Sata DID NOT perform the Electromyogram Tests that could have located injuries.) The verdict must be the result of passion or prejudice or not understanding the evidence. Defendants admitted liability.

The plaintiffs hereby appeal to the Court of Appeals of the State of Washington from that certain judgement and order made, rendered and entered in this court and cause on the 30th day of June, 1976, and from each and every part of said order to said Superior Court, and from all rulings and orders adverse to the plaintiffs which occurred during the trial of this case prior and subsequent to the entry of such order.

Dated this 29th day of July, 1976

Defendants Attorneys:

Kenneth L. LeMaster

R. Scott Fallon
Plaza Building
NE 45th and BROOKLYN AVE. NE
Seattle, Washington 98185

LEGAL DEPARTMENT

Beatrice E. Koker, Plaintiff Pro Se
signed
Erich Koker, Plaintiff Pro Se
939 - North 105th St.
Seattle, Washington 98133

Telephone: 783-6998

appendix A-3

D. TAYLOR, CLERK
DIVISION 1
PACIFIC BUILDING

25th June
23rd

The Court of Appeals
of the
State of Washington
Seattle
98104

484-7750
AREA CODE 206

June 5, 1978

Mr. Erich Koker
Mrs. Beatrice E. Koker
939 North 105th Street
Seattle, WA 98133

Mr. Kenneth L. LeMaster
Mr. R. Scott Fallon
Attorneys at Law
Plaza Building
4333 Brooklyn Avenue N.E.
Seattle, WA 98105

Counsel:

Re: No. 4916-I, Koker, et ux. v. Sage, et ux., et al.
King County No. 773620

The opinion filed by the court in the above-referenced case today, states in part as follows:

"Affirmed."

In accordance with RAP 14.4(a), claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed to have been waived.

Very truly yours,

Richard D. Taylor

Richard D. Taylor
Clerk

RDT/bes
Enclosure

cc: Hon. Donald J. Horowitz
Attorney at Law
1600 Seattle Tower
Seattle, WA 98101

Appendix A-4

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ERICH KOKER and BEATRICE E. KOKER, husband and wife, Appellants, v. NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR., Respondents.	)	No. 4916-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellants Koker, having filed a motion for reconsideration, and the court having determined that it should be denied; Now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same hereby is, denied.

Done this 8th day of August, 1978.

Chief Judge

Appendix A-5

The Supreme Court

State of Washington
Olympia
98504

February 2, 1979

Mr. Erich Koker
Ms. Beatrice Koker
939 North 105th Street
Seattle, Washington 98133

Mr. Kenneth LeMaster
Mr. R. Scott Fallon
Plaza Building
4333 Brooklyn Avenue N. E.
Seattle, Washington 98105

Counsel:

Re: Supreme Court No. 45846 - Koker v. Sage
Court of Appeals No. 4916-I

Following consideration of the above entitled Petition for review on February 2, 1979, the following notation order was entered on page 125, Vol. 1, of the petition for review docket:

"DENIED

/s/ Robert F. Utter
Chief Justice"

Very truly yours,

JOHN J. CHAMPAGNE
Clerk

JJC:aje

cc: Division I, Court of Appeals

Appendix A-6

The Supreme Court

State of Washington
Olympia
98504

February 6, 1979

Mr. Erich Koker
Ms. Beatrice Koker
939 North 105th Street
Seattle, Washington 98133

Dear Mr. Koker:

RE: Supreme Court No. 45846 - Koker v. Sage
Court of Appeals No. 4916-I
King County No. 77362

This is to acknowledge receipt of your letter of February 5, 1979, wherein you indicate that it is your intention to file a motion for reconsideration of the order entered by this Court on February 2, 1979, denying the above entitled petition for review.

In accordance with RAP 12.5(b)(3) (ROA I-50 was repealed in 1975) the decision of the Court of Appeals became final on the date that the petition for review was denied. No further procedures are available under the Rules, as a consequence, the Court will not consider any additional pleadings in the cause.

Very truly yours,

JOHN J. CHAMPAGNE
Clerk

JJC:aje

cc: Mr. Kenneth LeMaster
Mr. R. Scott Fallon
Honorable Richard Taylor, Clerk
Division I, Court of Appeals
Honorable Kenneth Helm, Clerk
King County Superior Court

Appendix A-7

APPENDIX

A - 8

A - 9

A - 10

A - 11

A - 12

A - 12(a)

A - 12(b)

A - 13

A - 13(a)

A - 14

APPENDIX

RICHARD D. TAYLOR, Clerk
WANDA BOUDREAU, Deputy

The Court of Appeals
of the
State of Washington
Seattle
98104

DIVISION I
PACIFIC BUILDING
(206) 464-7750

March 6, 1979

Mr. Erich Koker
Mrs. Beatrice E. Koker
929 North 105th Street
Seattle, WA 98133

Mr. Kenneth L. LeMaster
Mr. R. Scott Fallon
Attorneys at Law
Plaza Building
4333 Brooklyn Avenue N.E.
Seattle, WA 98105

Counsel:

Re: 4916-I, Koker v. Sage

Following consideration by a panel of the judges of this court, the following notation order has been entered in the above-referenced appeal on February 28, 1979:

"Motion to Change or Modify Decision
Rule 12.7(a)

Denied

/s/Jerome Farris
Acting Chief Judge"

Very truly yours,

Richard D. Taylor
Clerk

RDT/wb

Appendix A-8

Koker

ME COURT OF APPEALS OF THE STATE OF WASHINGTON

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Appellants,

v.

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,

Respondents.

MANDATE

No. 4916-I

King County No. 773620

The State of Washington to: The Superior Court of the State of Washington

in and for King County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on June 5, 19 78, became the decision terminating review of this court in the above entitled case on March 7, 19 79. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to RAP 14.6(c), costs are taxed as follows: Sixty-five and No/100 Dollars ($65.00) in favor of respondents and against appellants. The motion for reconsideration was denied by an order dated August 8, 1978; the petition for review was denied by an order dated February 2, 1979.

cc: Mr. Erich Koker
Ms. Beatrice Koker
Reporter of Decisions
Mr. Kenneth L. LeMaster
Mr. R. Scott Fallon

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 7th day of March, 19 79

RICHARD D. TAYLOR
Clerk of the Court of Appeals, State of Washington, Division 1

appendix A-9

RECEIVED
APR - 2 1979
CLERK OF COURT OF APPEALS
STATE OF WASHINGTON
File No.

Date	Filings and Proceedings
8/8/78	Order Denying Motion for Reconsideration
8/11/78	Motion for extension of time to file petition for review to October 8, 1978 - "Granted" by CJ Farris on 9/7/78
9/26/78	Request for permission to file 11 additional pages to petition for review; Affidavit of service "Granted" by notation order by CJ on 10/17/78
10/9/78	Petition for review - served 10/19/78 # 45846 2-2-79
10/18/78	Pouches (2) and briefs (10 A; 10 R; 10 Reply) delivered to the Supreme Court - Receipt acknowledged 10/27/78
2/5/79	Petition for review DENIED by Supreme Court 2/2/79
2/5/79	Copy of letter to Supreme Court from appellant
2/7/79	Copy of letter from Supreme Court to appellant
2/9/79	Appellants' Motion to Change or Modify Decision, Rule 12/7(a) received - ret'd to app. on 2/14/79
2/15/79	Appellant's Motion to Change or Modify Decision - Rule 12.7(a); Motion Pursuant to Rule 17.7, Objection to Ruling, Review of Decision on Motion by Appellate Court Judges (Both +3)
2/16/79	Evidence (+7 - to be attached to motions filed 2/15/79)
2/28/79	Motion to Change or modify decision - DENIED by ACJ. Farris;
3/7/79	Mandated
3/9/79	Motion: Recall of mandate (+4)

appendix A-10

Koker

RICHARD D. TAYLOR, Clerk
WANDA BOUDREAU, Deputy

The Court of Appeals
of the
State of Washington
Seattle
98104

DIVISION I
PACIFIC BUILDING
(206) 464-7750

April 13, 1979

Mr. Erich Koker
Ms. Beatrice Koker
939 N. 105th St.
Seattle, WA 98133

Mr. Kenneth L. LeMaster
Mr. R. Scott Fallon
Attorneys at Law
Plaza Building
4333 Brooklyn Ave. N.E.
Seattle, WA 98105

Counsel:

Re: No. 4916-I, Koker v. Sage

The following notation order was entered in the above-referenced case today:

"Motion to recall mandate

Denied."

/s/ Herbert A. Swanson

Acting Chief Judge

Very truly yours,

Richard D. Taylor

Richard D. Taylor
Clerk

RDT/mlg

Appendix A-11

RECEIVED
APR 16 1979
CLERK OF SUPREME COURT
STATE OF WASHINGTON

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Plaintiff/Appellant/Petitioner,

V

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.

Respondents.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Supreme Court: 45846
Court of Appeals Div 1 . . . 4916-I
Superior Court: 773620

NOTICE OF APPEAL

SEEKING REVIEW: Erich Koker and Beatrice E. Koker, Petitioners pro se

APPEAL FOR: DENIAL OF MOTION TO RECALL MANDATE WHICH WAS PREMATURELY ISSUED THE SAME DAY PETITIONERS RECEIVED DENIAL OF MOTION.

APPEAL FOR: DENIAL OF MOTION 12.7(a) and 17.7 REGARDING LETTER-EVIDENCE PROVING BY ELIMINATING DOUBT OF APPELLATE COURT DECISION FOR NEWLY DISCOVERED EVIDENCE IN ERROR 3A. DECEIT.

APPEAL FOR: RECONSIDERATION OF PETITION FOR REVIEW EN BANC AS FIRST REVIEW. REHEARING DENIED BECAUSE OF REPEAL OF RULE ROA-I 50

APPEAL FOR: EVIDENCE SUBMITTED 12.7 and 17.7 IMPERATIVE TO FINAL JUSTICE: I ASK THE SUPREME COURT OF THE STATE TO UNDO A DENIAL OF A RIGHT TO APPEAL WHEN A MANDATE IS PREMATURELY ISSUED BLOCKING THE APPEAL OF VITAL EVIDENCE WHICH COULD WARRANT A REVERSAL.

APPEAL FOR: USING RULE 1.2 WAIVER AND RCW 2.28.150 POWERS EXTRAORDINARY TO WHATEVER MEANS NECESSARY FOR JUSTICE TO BE.

COPY SENT CERTIFIED MAIL TO:
The Court of Appeals Division 1 Seattle, Washington
Kenneth L. LeMaster and R. Scott Fallon
4333 - Brooklyn Avenue NE
Seattle, Washington 98185
Telephone: 633-1310

Beatrice E. Koker
Beatrice E. Koker, Pro Se
Erich Koker
Erich Koker, Pro Se
939 - North 105th St.
Seattle, Washington 98133
Telephone: 783-6998

Dated: April 16, 1979
BEK

Appendix A-12

ERICH KOKER and BEATRICE E. KOKER, husband and wife,
Plaintiff/Appellant/Petitioner,

F

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.

Respondents.

IN THE SUPREME COURT OF THE

STATE OF WASHINGTON

Superior court 773620
Court of Appeals Div 1 . . 4916-I
Supreme Court of Washington 45846
april 9, 1979

NOTICE OF APPEAL IN DELAY OF RULING ON MOTION TO RECALL MANDATE IN THE COURT OF APPEALS

NOTICE OF APPEAL FROM PREMATURE ISSUANCE OF MANDATE BLOCKING APPEAL OF MOTION TO SUPREME COURT. MOTION ISSUED BEFORE MANDATE, AND ACCEPTED BY APPELLATE COURT.

NOTICE OF APPEAL FROM COURT OF APPEALS RULING ON MOTION 12.7 ACCEPTED AND RULED UPON BEFORE ISSUANCE OF MANDATE.

UPON FAVORABLE RULING THIS LETTER-EVIDENCE, TO RULE 1.2 REOPEN THE REVIEW EN BANC TO CONSIDER THIS MOTION 12.7(a)

OR ALTERNATIVELY RULE 4.3 TRANSFER

TO PROMOTE THE ORDERLY ADMINISTRATION

OF JUSTICE.

NOTICE OF APPEAL OF REFUSAL OF CLERK OF COURT OF APPEALS TO DOCKET MOTION REGARDING MOTION 12.7, 17.7, 12.9. HE DID NOT EVEN READ THE MOTION JUST SAID THE MANDATE IS DOWN SINCE MARCH.

STATE REMEDIES IMPEDED:

THE ENTIRE CONTROVERSARY AT THIS POINT STEMS FROM MOTION 12.7 (A) WHICH WAS ACCEPTED IN FILING BY THE COURT OF APPEALS UNDER RULE 17.7 AND RULED UPON, WHICH SHOULD BE BY RIGHT UNDER THE LAW SUBJECT TO APPEAL.

TO ISSUANCE OF THE MANDATE PREMATURELY IS TO DENY ME THE RIGHT TO APPEAL. I ASK THAT YOU USE RULE 1.2 WAIVER TO ADJUDICATE JUSTICE. THE MANDATE IS PREMATURE. THE SUPREME COURT HAS THE POWER TO CHANGE THIS INJUSTICE, RECALL THE MANDATE, RULE ON APPEAL IN MOTION 12.7 (a), AND UPON A FAVORABLE RULING REOPEN THE PETITION FOR REVIEW TO INCLUDE THE EVIDENCE-LETTER OF MOTION 12.7(a).

|| CITATION || 4 PACIFIC DIGEST 2d 233 APPEAL AND ERROR Washington 1972
Westa Key 1188 Making and Issuance

"Where cause was remitted by the Court of Appeals on the same day it entered order dismissing the appeal for want of prosecution, cause was remitted PREMATURELY and motion to recall remittur filed within 30 days after decision was entered was timely."

Appendix A-12 (a)

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Plaintiff/Appellant/Petitioner,

V

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, Jr.

Defendents/Respondents.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RE: 46169 MOTION FOR DISCRETIONARY REVIEW

Supreme Court: #45846
Court of Appeals: #4916-I
Superior Court: #773620

PERMISSION RESPECTFULLY ASKED

Dated: May 11, 1979

I, BEATRICE KOKER, PLAINTIFF/APPELLANT/PETITIONER PRO SE, RESPECTFULLY ASK LEAVE TO ANSWER RESPONDENTS' ANSWER TO MOTION FOR DISCRETIONARY REVIEW BECAUSE:

(1) THERE IS A PRECEDENT CASE TO COUNTERACT HIS ANSWER.

(2) THE DEFENSE ATTORNEY HAS IGNORED THE ISSUES OF THE MOTION.

(3) THE LEGAL PRO SE REPRESENTATION IS PRECARIOUS. I THEREFORE ASK THIS ANSWER BE ACCEPTED AS MY ATTEMPT FOR SELF-PROTECTION.

(4) THE DEFENSE ATTORNEY DISREGARDS THE CIRCUMSTANCES SURROUNDING MY USE OF THE COURT RULES, AND DISTORTS THE PURPOSE OF THE RAP RULES AS USED BY THE PETITIONER BEATRICE KOKER.

Copy Sent Certified Mail To:
Kenneth L. LeMasters and R. Scott Fallon
4333 Brooklyn Avenue NE Seattle, Wash.
98185 Telephone: 633-1310

Respectfully submitted,
Beatrice E. Koker
Beatrice E. Koker, Pro Se
Erich Koker
Erich Koker, Pro Se
939 - North 105th St.
Seattle, Washington 98133
Telephone: 783-6998

ibed and Sworn to before me this 11 day of MAY 19 79

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

Residing at Seattle
(Place of Residence)

Appendix A-12 (b)

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Plaintiff/Appellant/Petitioner,

V

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, Jr.

Defendents/Respondents.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RE: 46169 MOTION FOR DISCRETIONARY REVIEW

Supreme Court: #45846
Court of Appeals: #4916-I
Superior Court: #773620

REPLY TO RESPONDENTS RESPONSE TO PETITIONERS MOTION FOR DISCRETIONARY REVIEW 12.9 - 12.7(a) - 17.7

Dated: May 11, 1979

I

REPLY TO RESPONDENT

***** QUOTING ***** RESPONDENT ATTORNEY HIS PAGE 2 LAST PARAGRAPH

"The mandate was properly issued by the Court of Appeals thirty-three days following denial by the Supreme Court of the appellants' petition for review, at which time there were no further remedies or avenue of appeals available to appellants. There is no basis for appellants' request that the mandate be recalled within the scope of the Court Rules."

Beatrice Koker Answers:

The defense attorney in his answer indicates there is no redress obtained for any reason after petition denial, including justice. He does not consider RAP 1.2 nor the Extraordinary Powers of the Supreme Court. There is a precedent case from the Supreme Court of the State of Washington proving the defense attorney mistaken.

II CITATION II Post v Spokane 28 Wn 701 (1902)

This is a case in which the Supreme Court has the power to grant a change of judgments which it has affirmed, upon a showing being made to the satisfaction of the court that the ends of justice require it. A proof of fact in that case came to light and the Supreme Court ruled favorably upon it in 1902 in a precedent case to preserve justice even though there was no deceit involved there. Quoting that case: 28 Wn 703 and 704:

> "Certainly no permission can be granted to disturbe the judgments affirmed or entered by this court unless it is made reasonably to appear that the ends of justice requires it. But the PRECEDENT of entertaining and considering such applications has already been established. Since our published reports contain nothing upon this subject, as far as we are now informed, we have thought it proper to make these observations in this connection, in order that the PRECEDENT established may be more generally understood."

How much more imperative it is to dissolve a wrongful verdict and unfair trial in the case at bar, when the verdict was obtained through deceit and fraud of the court as in one instance Error 3 A.

The defense attorney has stated in his response there is no basis for petitioner's request for a recall of the mandate within the scope of court rules. There is basis to recall the mandate in RAP 12.9; there is basis to review the denial by Appellate Court of RAP 12.7(a) pursuant to 17.7; there is basis to take another look for justice in this case and reverse the decision. The rules of the court do not permit adverse influence in trial, to obstruct

or impede due adminstration of justice is never allower per the:

II CITATION II 20 ALR Federal Cases p 755 § 9

> "It has been recognized that 18 USCS § 1503 protects not only court proceedings, but such proceedings as preliminary hearings and grand jury investigations as well, since the latter-mentioned proceedings serve as extensions of the court. Thus, the "due administration of justice" can begin at the earliest, with the filing of the complaint, and it does not end, at the latest, until the final disposition of the last appeal. Obstructive action taken at any point in between, even while there is no judicial proceedings, actually in progress is punishable, since the matter would still be pending."

This citation applies to delay from a fraudulant continuance granted on the ground presented by the defense attorney as a "conflict of trial dates" when in fact he was proven to be in a motion. See Proof: Appellants' Petition for Review Appendix A-12 (a)(b)(c)(d). See Proof: Untruth #4 Motion 12.7(a) page 16.

Delay is an insidious barrier to justice. There is a mistrial February 1975 caused by actions of defense attorney and 18 months delay from mistrial to trial. Proof: Motion 12.7(a) page 11 and 12 and Appellants' Reply Brief page 1.

ALL OF THE MOTION FOR DISCRETIONARY REVIEW NOW PENDING IS RELATED TO ANY EXAMPLES GIVEN HEREIN.

What can a court judge do to fulfill his duty if the facts are withheld by untruths by some attorneys, the very persons most obligated to inform the judge honestly and truthfully? A court has

Appendix A-12 (b)

the responsibility to discourage delay and insist upon prompt disposition of litigation according to 10A Federal Practice Digest 847 Wests Key 327.

There is every basis and reason for this petitioner to ask for the recall of the mandate, review of Motion pursuant to 12.7(a) and 17.7, and reversal of the entire trial, within the scope of court rules and the law of the land and the proven deceit in trial, and proving impeding and obstruction of justice with prejudice at every turn to me. AFOREMENTIONED. REITERATED. PROVEN FROM THE RECORD.

II

REPLY TO RESPONDENT

***** QUOTING ***** RESPONDENT ATTORNEY ITEM (5) HIS PAGE (1)

> "The mandate was issued by the Court of Appeals. This procedure is quite proper pursuant to RAP 12.5 (b) (3), wherein it states such mandate may be issued by the Court of Appeals upon denial of the Supreme Court of Petition for Review."

Beatrice Koker Answers:

Mr. LeMaster has again evaded all the issues. According to Rule 12.5 (a) (which he does not even mention) a "mandate" is a WRITTEN NOTIFICATION by the Clerk of the trial court and the parties of an Appellate Court Decision terminating review.

Appendix A-12 (b)

THERE WAS NO WRITTEN NOTIFICATION OF A MANDATE. NO MANDATE WAS ISSUED. Motion 12.7(a) and Motion 17.7 were both submitted to the Court of Appeals before issuance of mandate, thus making this a proper and timely motion accepted by the Court of Appeals. There is a ruling of DENIED, but my right for review was estopped.

At this point, there is a strange twist of facts. The docket of the Appellate Court shows Motions 12.7(a) and 17.7 DENIED February 28, 1979. Letter of notification of denial of those motions to petitioners is dated March 6, 1979. This notification letter is markedly missing from the docket, and am therefore enclosing the notificater letter for proof of date, and the docket sheet. Appendix A-1 and Appendix A-2

THE MANDATE IS THEN ISSUED WITHIN 24 HOURS OF NOTIFICATION OF DENIAL OF MOTIONS 12.7(a) and 17.7 TO THE PETITIONERS. That is an issue. Premature issuance of the mandate obstructed the right to ask the Supreme Court for review of an Appellate Court ruling on motions.

The mandate was issued prematurely in this improper manner. The right to ask the Supreme Court for review of the denial was estopped abruptly. To issue a mandate in this hasty premature manner is even more improper because of the subject-matter of the Evidence-Letter in both motions regarding Error 3A and deceit in a trial court. Also, in addition, the Supreme Court had ruled

Appendix A-12 (b)

en banc on Error 3A in the Petition for Review. That makes an inherent right for the Supreme Court to examine the Evidence-Letter in conjunction with the Untruths #1 #2 #3 #4 and proving the deceit plugging the last link in the technicality of "newly discovered evidence."

Therefore, the mandate was improperly and prematurely issued UNDER THE CIRCUMSTANCES in the wake of events so proving. The defense attorney makes no mention of the Evidence-Letter nor his part in deceit of the trial.

The Petition for Review was a Discretionary Review and it was DENIED. RAP 13.5(d) Effect of Denial:

> "Denial of discretionary review of a decision does not effect the right of a party to obtain later review of the Court of Appeals decision or the issues pertaining to the decision."

+ RAP 13.5 (b) (2)

> "If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act, . ."

(a) To prematurely issue a mandate is to substantially limit my freedom to move in any direction for relief of improper timing of the mandate dissallowing my right to ask for review of a ruling on Motions by the Court of Appeals.

Appendix A-12 (b)

(b) The law of the land and the rules of the court protect the UNSUSPECTING as well as the wary.

(c) Discretionary review is granted to me by the Supreme Court and gratefully received by Pro Se Beatrice Koker.

III

REPLY TO RESPONDENT

**** QUOTING **** RESPONDENT ATTORNEY HIS PAGE (2) PARAGRAPHS (1)(2)

"Further, pursuant to RAP 12.4(g), a motion to modify the decision of the Court of Appeals must be preceded by the party's motion for reconsideration being granted."

"In this case, not only was the appellants' motion for reconsideration DENIED by the Court of Appeals but their subsequent and improper motion to change or modify (which is in reality a second motion for reconsideration) is clearly prevented by RAP 12.4(h), but in any event was DENIED by the Court of Appeals."

Beatrice Koker Answers:

In reality what Rule RAP 12.4(g) actually says, is this:

"If a motion for reconsideration is granted, the Appellate Court may (1) modify the decision without new argument, (2) call for new argument, or (3) take such other action as may be appropriate."

The defense attorney knows Rule RAP 12.7(a) is not a reconsideration rule. The defense attorney has completely ignored the subject matter of RULE 12.7(a) and 17.7 Motions. (Deceit and Untruths) The Evidence-Letter and Error 3A and deceit in the trial court CORRELATED TOGETHER FOR THE FIRST TIME has not been considered before. How could he think an Evidence-Letter never seen be reconsideration?

Appendix A-12 (b)

Why do the court rules have RAP 12.7(a) if what the defense attorney claims that only decisions granting reconsideration can be changedor modified? According to that theory as per his response document, RAP 12.7(a) should be integrated into RAP 12.4 as 12.4(i) and abolish 12.7(a) RAP entirely!

Again the defense attorney has not recognized RAP 1.2 and the justice power of the Appellate Structure. He makes no mention of repugnant deceit in trial court. The technicalities of pre-decisions can be oblitereated and the rules bent for justice. The precedent case page 2 and page 3 herein says it like it is: Possible. Probable. Accomplished.

IV

REPLY TO RESPONDENT

**** QUOTING **** RESPONDENT ATTORNEY ITEM (4)HIS PAGE (1)

"Appellants' improper motion to change or modify the Court of Appeals decision was DENIED."

Beatrice Koker Answers:

WOULD AN APPELLATE COURT RULE UPON AN "IMPROPER" MOTION?

Is the defense attorney calling the Appellate Court improper because the Honorable Judges accepted motions 12.7(a) and 17.7 and ruled upon same?

Appendix A-12 (b)

The mandate had not been issued. The motions were proper because pursuance of justice is never improper. Deceit is improper.

II CITATION II Southerland v County of Oakland
77 Federal Rules Decisions 733 (2) (3)

> ". . . fraudulent statements to the court are particularily disturbing bevause he is an attorney and as such, an officer of the court obliged to act forthrightly at all times."
>
> "While he should represent his client with singular loyality, that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary, his loyalty to the court, as an officer thereof, demands integrity and honest dealings with the court. And when he departs from that standard of conduct of the case he perpetrates a fraud upon the court." 7 Moore's Federal Practice 513 (1975) (Citations Omitted)

A fair trial is the most precious constitutional right of all citizens. The legal profession goes to great lengths to instill public confidence in the profession as it should, because only the legal profession has the capacity and ability to represent the public correctly in court.

In re Murchison, et al, 349 U.S. 133, 136, 99 L Ed 942, 946 (1955) said that court emphasized our system of law has always endeavored to prevent even the PROBABILITY OF UNFAIRNESS." (Emphasis Mine)

Appendix A-12 (b)

There is a public image of the legal profession. Justice Jackson, concurring in Hickman v Taylor 329 U.S. 495 (1947) said it this way:

> "But it too often is overlooked that lawyers and the law office are indispensable parts of our administration of justice . . The welfare and tone of the legal profession is therefore of prime consequence to society."

UNFAIR TRIAL:

There are questions to be answered by the defense attorney to allegations presented throughout appeal. He has chosen not to answer, here and now, nor in the briefs, nor oral argument.

The following example is pertinent to the motion pending at this time because these very happenings instigated the appeal in the first place. The enclosed affidavits will substantiate the relating of this incident. The purpose is to reinforce review of motions pertaining to Deceit in Error 3A and the Letter-Evidence submitted, and recall the mandate to rule on 12.7(a) and 17.7 and the Petition for Review and the reversal of the verdict.

June 7, 1976: My attorney then, Mr. Betts, sent me ALONE to a defense doctor two days prior to trial. The defense doctor subjected me to a veritable bevy of questions resembling a deposition interrogation. He was extremely rude but I did not become angry, but I was sarcastic and asked: "Is this supposed to be a medical examination or a deposition?"

Appendix A-12 (b)

Quietly, in a lady-like manner I told him his questions were improper because I thought I was supposed to be at a medical examination, not a deposition, and would call my attorney and put a stop to it. My attorney was not in and I spoke to a colleague of his who told me to just ignore it.

The trap is recognized now. In court, from the record, this is what happened:

RP VOL III p 228/10-23: Direct Examination Of Doctor By Defense

Mr. LeMaster: "Doctor, was there anything unusual that occurred during the taking of your medical history from Mrs. Koker?"

Dr. Klemperer: "She felt that she had to consult her attorney about the - - call her attorney about - - my role in this matter, and WHETHER OR NOT SHE WAS IN A DEPOSITION."

What did the attorney of Beatrice Koker do in rebuttal?

RP VOL III p 252/1-10: Mr. Betts Cross Examination Dr. Klemperer

Mr. Betts: "Doctor, you told the jury that when you first started examining her, she wanted to call me, her attorney, about the procedure of what was going on; isn't that true?"

Dr. Klemperee: "Right."

Mr. Betts: "And that was because she thought it was supposed to be a deposition rather than an examination; isn't that what she told you?"

Dr. Klemperer: "That's right."

Appendix A-12 (b)

Mr. Betts: "And you contacted my office, and everything was straightened out, and you told - I told her that this was a medical examination?"

Mr. Betts wasn't even in his office, and did not speak with Dr. Klemperer, and he as my attorney was told the affrontry of this medical man and his rudeness and his improper questions for a medical examination. I had been to both depositions and medical examinations and really did know the difference.

The entire thrust of the defense was to depict me as a woman "far gone mentally" and my attorney aided and abetted the defense in the aforementioned example. Why would an attorney of such experience and stature and respect as Mr. Betts do this? The jury never got the explanation.

Please refer to Affidavit Section Appendix this document. A citation has revealed to me a surprising fact, and there are more answers to be obtained regarding my protection in court and litigation.

II CITATION II MODERN TRIALS 1961 Supplement 311 and 312

Footnote 41[a]: Sharff v Superior Court (1955) 44 Cal 2d 508, 282 P 2d 896

"Whenever a doctor selected by the defendant conducts a physical examination of the plaintiff, there is a possibility that **IMPROPER QUESTIONS**, may be asked and a lay person should not be expected to evaluate the propriety of every question at his peril. The plaintiff therefore, should be permitted to have the assistance and protection of an attorney during the examination."

Appendix A-12 (b)

The litigation in the case at bar comes to you at an age of nearly 8 years since the day of the wreck June 4, 1971. I must without choice endure the injuries, the repercussions and aftermath of the injuries, the humiliation of an unfair trial, the heartbreak and disappointment in wrongdoing of people I trusted, both attorneys. The burden of pro se from necessity in a legal struggle for justice has fallen to me. When a legal misstep is done in court depriving a citizen of that cherished right to a fair trial, there must be redress and remedy for the victim of the legal misstep which resulted in deceit of the Judge, jury and the litigants. There must be a reversal and an attempt of restitutuion for those who have been deceived, wronged, deprived of constitutional promises. We, the Petitioners.

I respectfully ask for Justice. I cannot touch a penny of that verdict. To do so would be to partake of a verdict obtained in deceit. It would be aiding the wrongdoers in accomplishing a goal "to win a case"? It would be approving the actions of those who deceived in a court of law. To not protest, to not fight, to not resist would be deceit in a trial sub silentio and a denial of justice. Please reverse?

Copy Sent Certified Mail to:
Kenneth L. LeMaster and R. Scott Fallon
4333 Brooklyn Avenue NE Seattle, Wash.
98185 Telephone: 633-1310

RESPECTFULLY SUBMITTED,
Beatrice E. Koker
Beatrice E. Koker, Pro Se
Erich Koker
Erich Koker, Pro Se
939 - North 105th Street
Seattle, Washington 98133
Telephone: 783-6998

Subscribed and Sworn to before me this 11 day of MAY 19

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

Residing at

Appendix A-12 (b)

JOHN J. CHAMPAGNE
CLERK

REGINALD N. SHRIVER
DEPUTY

The Supreme Court

State of Washington
Olympia
98504

June 1, 1979

Ms. Beatrice Koker
Mr. Erich Koker
939 North 105th Street
Seattle, Washington 98133

Mr. Kenneth LeMaster
Mr. R. Scott Fallon
4333 Brooklyn Avenue
Seattle, Washington 98185

Gentlepersons:

Re: No. 46169 - KOKER V. SAGE
Court of Appeals No. 4916-I

Enclosed herewith is a copy of the Ruling Denying Motion for Discretionary Review signed by the Commissioner on May 31, 1979, in the above referenced cause.

Very truly yours,

JOHN J. CHAMPAGNE
Clerk

JJC:aje

cc: Division I, Court of Appeals

Appendix A-13

FILED

THE SUPREME COURT OF WASHINGTON

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Petitioners,

v.

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,

Respondents.

NO. 46169

RULING DENYING MOTION FOR DISCRETIONARY REVIEW

This matter came before the Commissioner on May 31, 1979 on petitioners' pro se motion for discretionary review of an April 13, 1979 order of the Court of Appeals, Division One, denying petitioners' motion to recall mandate. Respondents have answered opposing the motion.

Petitioners do not suggest why their motion should be granted in view of the considerations set forth in RAP 13.5(b), but rather appear to argue that there were improprieties of some sort in the original mandate procedure and injustices in past proceedings in the long history of this lawsuit. These allegations are not really relevant to the present motion, and in any event the files in this matter indicate that petitioners' case has received exhaustive consideration at each of the various court levels which it has previously passed through.

There being no grounds for discretionary review of the order denying motion to recall mandate, the motion for discretionary review is denied.

DATED at Olympia, Washington this 31st day of May, 1979.

COMMISSIONER

Appendix A-13

Ruling on 17.7 will be July 20, 1979

May 11, 1979
June 8, 1979

April 9, 1979
April 16, 1979

III(C)

RECEIVED
JUN - 8 1979
CLERK OF SUPREME COURT
STATE OF WASHINGTON

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Plaintiffs/Appellants/Petitioners,

v

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.

Respondents.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Re: Discretionary Review 46169
Supreme Court . . 45846
Appellate Court . 4916-I

RULE 17.7 MOTION TO MODIFY RULING - DIRECTED TO THE HONORABLE JUDGES OF THE STATE SUPREME COURT OF WASHINGTON

Dated: June 8, 1979

Put June 1, 1979 Denial Discretionary Review back in the 17.7 put back Commissioners denial Supreme Court

IDENTITY OF PETITIONER: Erich Koker and Beatrice Koker, Pro Se

DECISION BELOW:

The Honorable Supreme Court Commissioner denies the petitioners the motion for Discretionary Review of the denial of Recall of the Mandate by The Court of Appeals Division I. The Honorable Commissioner states the petitioners did not suggest why their motion should be granted in view of the considerations set forth in RAP 13.5(b) (2).

Proven Grounds For Review:

RAP 13.5(b)(2): "if the Court of appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act, or"

Petitioners Desperation No Freedom To Act:

The legal limits of freedom of a pro se to act was so limited in the Court of Appeals Division I, as to accurately be labeled "desperation." A personal journey was made to Olympia by Beatrice Koker even to asking for relief under rule 4.3 because there was no place to go. Please ask Mr. Shriver for verification that a pro se petitioner came into the office saying she was not there to complain but simply because she was desperate and could not legally move in any direction. Papers pertaining to that restriction submitted to the Supreme Court of the State of Washington April 9, 1979 and April 16, 1979

Appendix A-13(a)

DECISION BELOW: "Not Improprieties"

The impression of the Honorable Commissioner is that the petitioner appeared to argue there were improprieties of some sort in the original mandate procedure.

"Premature Mandate:

(a) A motion was submitted to the Court of Appeals Division I and later the motion was denied.

(b) There was a lapse of 7 days from denial of the motion to notification of the motion being denied.

(c) The 10 days time allowed to ASK for review of a ruling, was then further diminished to three days.

(d) Within 24 hours of notification, the mandate was issued prematurely destroying the constitutional right to ASK for review of a denied ruling.

"To Correct Error"

A motion to Recall Mandate was filed in the Court of Appeals under Rule 12.9(a) - "to correct error."

The motion was not ruled upon as the 30 day finality of a mandate approached. To allow the thirty-day-finality of a mandate to lapse without question or motion or ruling, would make moot the necessity of any decision. "No freedom to act" became a fact. "The mandate is final" was an oft repeated sentence burned into my cortex April 6, 1979 while trying to ferret information as to the whereabouts of Motion To Recall the Mandate. Every question was answered: "The mandate is final." The motion was not located. The "freedom to act" annihilated.

Appendix A-13(a)

DECISION BELOW: Court of Appeals:

The entire purpose of petitioners motions was to present proof of "newly discovered evidence" when applied to Error 3(a) in Petition for Review and Briefs.

A doctor changed his medical report in deposition.
The deposition was never transcribed.
The doctor was never called to testify.
The following letter-evidence proves concealment.
The following letter proves Error 3(A)

J. A. SKEEL (1958)
J. A. McKELVY (1978)
HARRY HENKE, JR.
WILLIAM E. EVENSON
WILLARD E. SKEEL
FREDERICK V. BETTS
JOHN C. PATTERSON
BRADLEY F. HENKE
THEODORE E. DEATON
CARL H. HAGENS
W. PAUL UHLMANN
OF COUNSEL

LAW OFFICES
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PAUL D. CAREY
BRUCE H. HURST
TRACY L. BROWN
JOHN P. BRAISLIN
S. THOMAS MAGNUSON
DOUGLAS S. DURHAM
LIVINGSTON WERNETTE
DONALD C. CRAMER

8 copies delivered Court of appeals

RECEIVED
FEB 16 1979
CLERK OF COURT OF APPEALS
STATE OF WASHINGTON

August 21, 1975

File No.

Mrs. Beatrice E. Koker
939 North 105th Street
Seattle, Washington 98133

Re: Koker vs. Sage

Evidence

Dear Mrs. Koker:

As I informed you the deposition of Dr. Sata was taken on Wednesday, August 20. Without going into a lot of detail, this doctor stated in effect that he could find no real objective evidence to support your various claims.

On Thursday, August 21, the deposition of Dr.

Please note there is no mention of a changed medical report. No mention of proven spondylosis aggravation, the reasonable cost of a myelogram never testified to in court leaving litigants to pay with borrowed money.

A denied ruling on motions quashed ASKING for review thus preventing this evidence being presented to the Supreme Court. (No freedom to act.) Denial of Motion to Recall Mandate which was prematurely issued contrary to constitutional provisions.

Appendix A-13(a)

DECISION BELOW: Commissioner State Supreme Court

The Commissioner goes on to say the petitioners appear to argue that there were improprieties of some for in past proceedings and injustices. Allegations not relevant to motion.

The packet of three motions stapled together and with tabs for the convenience of the Supreme Court, you will find in RAP 12.7 UNTRUTH #1 - #2 - #3 - #4 and the proof of each. All the facts relevant to the motion for Discretionary Review are within these three motions, plus the filing of the papers April 9, 1979 and April 16, 1979. These facts are relevant to the motion in all respects.

The very purpose for asking for the Recall of the Mandate in the Court of Appeals was to claim the right to ASK FOR REVIEW of a ruling. That is relevant. The very purpose of submitting Motion 12.7 was to present "letter-evidence" proving without one doubt, the newly discovered evidence of Error 3(a).

In view of these actions, and denials, and rejections, there is merit displayed that the "letter-evidence" is a factual proof for reversal, that is being prevented by "no freedom to act."

The jury foreman affidavit in which a jury is so confused they must take a vote to determine guilt of innocence of the "victim of admitted liability", is certainly relevant to any aspect of this case and the allegations of injustice have everything to do with an appeal, the discretionary review and motions. The allegations have been proven from the record.

The exhaustive consideration is appreciated. The Court of Appeals found abuse of discretion, the Supreme Court decided the petition for review en banc. The closeness of the decisions has everything to do with the Discretionary Review now and the modification of the ruling, and weighing "newly discovered evidence."

Appendix A-13(a)

Received & filed in the Supreme Court State of Washington April 11, 1979

ISSUES PRESENTED FOR REVIEW:

(1) Does not Rule 13.5 (b)(2) apply to the circumstance of desperation because the "freedom to act" and the "freedom to ask" for review was estopped by premature mandate issued by the Clerk of the Appellate Court?

(2) The facts on record of a docket in the Court of Appeals shows the denial of Motion 12.7(a) was made February 28, 1979. There is a notification letter of denial of that motion dated March 6, 1979.

Is not a delay of 7 days out of a 10 day limit to ASK for review the motion, be a denial of a constitutional right to be heard?

(3) Is it not conclusive evidence that a mandate issued within 24 hours after notification of denial of a motion, leaves a void in constitutional protection?

(4) When the record shows Beatrice Koker made a journey to the Temple of Justice in Olympia asking for help in desperation, does that not apply to Rule 13.5(b)(2) and reason for Discretionary Review to be granted?

(5) Would not asking for jurisdiction be removed under rule 4.3 from the Court of Appeals be a consideration for Rule 13.5 (b)(2) and Discretionary Review?

(6) Motion 12.7 was submitted to the Appellate Court under Rule 17.7 February 15, 1979 holding the proof of "newly discovered evidence." An issue here being relevancy for Discretionary Review because the "evidence-letter" is quashed by the premature issuance of the mandate cutting off the right for review of a ruling. Would not a premature mandate preventing an absolute right to ASK be denying the due process of law in appeal?

appendix A-13(a)

ISSUES PRESENTED FOR REVIEW:

(7) What justification is there for issuance of a premature mandate and then the Court of Appeals upholding the error which denies a constitutional privilege?

(8) Is untruth in a court of law by the quasi-judicial officers of the court to be called "impropriety" or "fraud of the court"? This is an issue because at no time have I mentioned the word impropriety and if this is mentioned in the opinion, then it is relevant in issues. Is "deceit" a mere impropriety?

(9) Why is it so difficult to get this "letter-evidence" to the Supreme Court?

(10) If the petitioners case has received exhaustive consideration, why then the very last motion that could have been put in treated with such elaborate rejection?

(11) The past trial proceedings have everything relevant to do with the motion. There was deceit in the trial in Error 3(A) The motion was to present further "letter-evidence" to prove that deceit. The motion to recall is based upon the rejection of the motion 12.7 with proof of deceit and "newly discovered evidence"!

(12) The Commissioner of the Supreme Court states the allegations of injustices in the trial proceedings are not really relevant to the present motion.

The proceedings in trial court and the wrongful acts therein and the allegations proven from the record apply to this present motion because the very essence of the motion concerns deceit. The letter-evidence is the subject of the motion, and from the denial of that motion, a premature recall is issued, and then recall is in limbo, surfaced, denied, only to end up in discretionary review of the recall. Denied. Still no letter-evidence getting before the Supreme Court.

Appendix A-13 (a)

STATEMENT OF THE CASE:

CHRONOLOGICAL SUMMARY

February 2, 1979:	The petition for review is denied by the State Supreme Court.
February 6, 1979:	The State Supreme Court informed petitioners the rehearing rule has been repealed in 1975. Had there been a rehearing, the "letter-evidence" could have gone direct to the Supreme Court.
February 7, 1979:	A evidence letter proving the petitioners did never know there had been a changed medical report in a deposition was found. In fact, the letter proved Error 3(A) and the letter proved the litigants were also misled.
February 9, 1979:	Motion 12.7(a) was sent to the Court of Appeals Division I post-haste. THE MANDATE HAD NOT BEEN ISSUED.
February 14, 1979:	The Clerk of The Court of Appeals returned Motion 12.7 to petitioners.
February 15, 1979:	Motion 12.7(a) was re-submitted in Rule 17.7 The Motion was accepted. THE MANDATE HAD NOT BEEN ISSUED.
February 28, 1979:	The docket sheet shows the mandate is issued on this date.
March 6, 1979:	A letter dated March 6, 1979 is sent to the petitioners notifying of denial of Motion 12.7(a) - "letter-evidence."
March 7, 1979:	Within 24 hours the mandate is issued cutting all "freedom to act" as per Rule 13.5(b)(2).
March 9, 1979:	Motion to Recall Mandate sent to the Court of Appeals within 2 days of issuance of the mandate. Rule 12.9(a) - "to correct error."

The Court of Appeals had the Recall Motion and nothing was heard. On April 6, 1979 I went to the Court of Appeals with a motion to protect my rights in that court and federal court. Not hearing, and then not investigating, and having the 30 day finality pass, would make the motion moot for recall.

Appendix A-13 (a)

STATEMENT OF FACTS: (Cont'd)

April 6, 1979: Beatrice Koker asked the Clerk of the Court of Appeals if there had been a ruling on the Recall of the Mandate. Answer: "The mandate is final."

Question: "How can a mandate be final, if the motion is still pending before the court?"

Answer: "The mandate is final.

Then my motion to protect state and federal rights was refused because,as he put it: "The mandate is final."

I asked if he would put the reason for rejection of my motion in hand on the margin of the front page. He replied he would not sign anything. I asked if he would mark the motion refused. This he did. An intention was make known that I would appeal under 17.7 and he said he would not take ANY of my papers.

"Freedom to act" Rule 13.5 (b)(2) became desperation for Beatrice Koker. In the Supplementary submitted it says:

"There was no where to turn. I left the premises of the Appellate Court in tears and utter despair."

April 9, 1979: A personal journey to Olympia to seek help. Mr. Shriver was told the situation and that I was not there to complain, but only as a desperate woman who did not know which way to turn because my hands were tied legally. He filed my attempted appeal and delved into where the Mandate Recall was.

Word was received from Mr. Shriver that the Motion to Recall the mandate was before the judges (The Mandate Was Not Final As Told) and they would be ruling. The ruling: Denied.

April 16, 1979: Supplementary papers, plus an appeal sheet, was brought to the Supreme Court to be added to the three packet stapled-together motions 12.7 - 17.7 - 12.9 for review:

Appendix A-13 (a)

STATEMENT OF THE FACTS: (Cont'd)

I asked: That the denial of Motion to Recall Mandate which was prematurely issued the same day petitioners received denial of Motion to Recall, be overruled.

I asked: After the Recall of the Mandate, to rule on the denial of Motion 12.7 and 17.7 regarding the "letter-evidence" proving "Newly Discovered Evidence" in error 3(A) a changed medical repor in deposition, and the contents of the deposition concealed from the jury, court and litigants. That letter being proof the petitioners did not know of a changed medical report before the trial. The doctor was not called to trial to testify. The deposition had never been transcribed. A tight picture of proof.

I asked: That under the circumstances of a premature mandate, proof of deceit in a trial and Error 3A that the petition for review EN BANC (as previously) be used to re-weigh the injustice and to reverse the jury verdict.

I asked: That Rule 1.2 waiver and RCW 2.28.150 powers extraordinary be used to whatever means necessary for justice.

Discretionary Review

Notice came that discretionary review would be May 31, 1979. All the facts were before the Supreme Court. The "freedom to act" was obvious. The error of a premature mandate was obvious. The desperation of the petitioner was obvious.

Discretionary Review is denied by the Supreme Court Commissioner May 31, 1979, saying the petitioners "do not suggest why their motion should be granted in view of the considerations set forth in RAP 13.5 (b)(2).

I turned to the Supreme Court the best I could under the circumstances of being crippled physicially and to be a pro se is to be a struggling burden of a cross to bear.

Appendix A-13 (a)

STATEMENT OF THE FACTS: (Cont'd)

The Supreme Court heard the Petition for Review EN BANC. The finality for justice within the State of Washington was so close. The request was that the Supreme Court of the State of Washington review this "evidence-letter" comparing the already proof of Error 3(A) and reverse the decision.

All motions, request, desperation words from denial of "freedom to act" are in the Supreme Court to be considered. I, as a petitioner, personally xeroxed the 9 copies needed for the Supreme Court Judges so that the office work would not be extra became of me. Everything is there to see. I ask for the Judges Honorable of the State Supreme Court to take over this case and finalize the remedy and redress in the State of Washington to one of her citizens for the past 37 years. Justice will then be possible. Only then.

ARGUMENT

The three year statute of limitations for other action is June 9, 1979. My trial June 4, 1979 as per the entire appeal is denial of procedural due process and denial of procedural equal protection in a court of law under the Constititon of the United States and the Constitution of the State of Washington.

Motion 12.7 in the pack of motions holds Untruth #1 and Untruth #2 and Untruth #3 and Untruth #4 which the Commissioner of the court refers to as "appearing to argue there were improprieties of some sort in the original mandate procedures and injustices in past proceedings."

To issue a mandate within 24 hours of notification of a denial of a motion I felt at first to be a "mistake" and appealed the reca in that manner 12.9(a). The appellate court upheld the premature

Appendix A-13 (a)

ARGUMENT (Cont'd)

mandate condoning an error of the Clerk of the Court, and completely denying due process to be heard in a RIGHT TO ASK for review of a denial of a motion.

The "freedom to act" was gone. In desperation a difficult journey for me, was made to Olympia and asking that the entire case be lifted from the Court of Appeals so that justice could be done in recalling a mandate, ruling on Motion 12.7 and 17.7 and viewing the "evidence-letter" and finding proof of the newly discovered evidence which in turn could reverse the jury verdict to allow justice.

Justice:

Beautiful Rule 1.2 states the rules will be liberally interpreted to promote justice. Cases are not to be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances were justice demands. Justice demands looking at the evidence, trying to forget there is a pro se giving you the facts ineptly. The State Supreme Court has the power to waive any of the rules in order to serve the ends of justice.

(a) Are the ends of justice served when Motion 12.7 is denied in appellate court when that motion holds the proof of "newly discovered evidence"?

(b) Are the ends of justice met when the "letter-evidence" is prevented from the en banc consideration by the Supreme Court?

(c) Could justice survive in a premature mandate cutting off the right to ask a review of a ruling?

(d) Where is justice in Discretionary Review not even recognizing the petitioner's desperate lack of "freedom to act"?

Appendix A-13 (a)

Attorneys are in a position of knowledge, expertise, and law and a superiority over and protection for a litigant-client in court proceedings and all litigation. The honesty, integrity, honor, dedication and responsibility of the Oath and CPR of the attorneys and the court is all that insures there will be a fair trial. When there is deceit from the attorneys, the very protectors of fairness, the day of the "day in court" is annihilated.

The only recourse is appeal of the wrong. If the injustice is not reversed on appeal, there is no justice to be had. Yet the Rule 1.2 Waiver is a beacon to those who have been wronged. But how does the beacon become available if the approach has a detour in denial of motions, denial of discretionary reviews, denial of due process to ASK for a review of a ruling?

No motion, no evidence, no pleadings will get to the Honorable Judges except through the proper personnel protecting the Judges from overwork, extra judicial tasks that can be handled elsewhere. But when the motion is "evidence" that could overturn a wrong and subsidize a "reversal" and that "evidence" is waylaid in technicalities and denials justice is obliterated in the process.

A jury foreman affidavit tells the story of confusion in a trial. A jury is so confused it takes him approximately 2 hours to convince the jury the permanently injured plaintiff is "not guilty." What kind of a farce is a trial when the victim of the injuries of an admitted liability automobile accident must have a criminal deliberation to determine the damages only?????
Jury Foreman Affidavit: See Appendix A-8 Petition for Review.

Is it now time to take another look at Error 3(A) in which the defense attorney reads an original medical report of a doctor when he KNOWS that doctor changed the medical report in deposition?

Appendix A-13 (a)

See Motion 12.7 - 17.7 - 12.9 in the packet of three motions, plus the papers submitted to the Supreme Court April 9, and April 16th. The motions are stapled together with tabs for the convenience of the court. All xeroxing was done by the pro se to save trouble for the Supreme Court and the Appellate Court, in the matter of these motions and also papers.

The very access which would enable a litigant to attain consideration by the Supreme Court is cut off by denial of Motion to Recall so that a premature mandate can be undone. To deny recall in the Court of Appeals is to put a stamp of approval upon denying me a constitutional right to ASK for review of a motion!

That motion was tremendously important - 12.7. A "evidence letter" sent before the mandate was even issued was in that motion. Denied. Then before I can even assemble papers to answer, the mandate is issued within 24 hours cutting off my right to appeal denial of a motion.

Even the Discretionary Review of the error presents another denial of justice using as a reason no grounds were presented under 13.5(b)(2) when the grounds were lived with and journeyed with to the Temple of Justice for help, and recorded in the papers presented to the court April 9, and April 16 along with the complete set of denied motions in the tab packet.

"Freedom to act" is again in denial of Discretionary Review. Where is justice when the wrong and deceit in trial are upheld by affirmance on appeal and the injured litigant is penalized for her honesty and truthfulness?

The three years from date of trial will be tomorrow. I have struggled and fought to present facts to the appellate structure, to gain justice through appeal. To have a new trial.

Appendix A-13 (a)

ARGUMENT (cont'd)

The Court of Appeals pointed out the lack of objections in the trial court, and the inadequate offer of proof in Error 10. There would have been a reversal if the offer of proof had been proper because there was abuse of discretion in Error 10.

Sadness and sorrow come when the three year statute is here. I still pray for a new trial and reversal of injustice in my Washington State. I pray for additur which would wipe out the need for a new trial based on the $145,000. "sensible award for a drop foot injury" as stated by the Court of Appeals Division I in Ryan v Westgard 12 Wash App 500 (1975)

The legal profession has my respect forever. I have come to separate the profession from those who have not upheld their promises.

The first thought associated with a court of law is "do you swear to tell the truth, the whole truth, and nothing but the truth"? Truth was told by the witnesses. Does the question also apply to those quasi judicial officers of the court who have an Oath and CPR as a reliance and insurance and a inspiration to be honorable? What happens if there is deceit and wrong in court by those under Oath are proven in untruths? I rest my case in your hands here, and I rest my case in God's Hands There.

COPY SENT CERTIFIED MAIL:

Defense Attorneys:
R. Scott Fallon and Kenneth L. LeMaster 4333 Brooklyn Aven NE
Seattle, Washington

Court of Appeals Division I

Respectfully submitted,
Beatrice E. Koker
Beatrice E. Koker, Pro Se
Erich Koker
Erich Koker, Pro Se
939 North 105th St. Seattle, Wn.
783-6998

Subscribed and Sworn to before me this 8th day of June, 19 79

(SEAL)

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

Residing at Seattle, WA
(Place of Residence)

Appendix A-13(a)

JOHN J. CHAMPAGNE
CLERK

REGINALD N. SHRIVER
DEPUTY

The Supreme Court

State of Washington
Olympia
98504

July 20, 1979

Ms. Beatric E. Koker
Mr. Erich Koker
939 North 105th Street
Seattle, WA 98133

Mr. Kenneth L. LeMaster
Mr. R. Scott Fallon
Attorneys at Law
4333 Brooklyn Avenue N. E.
Seattle, WA 98185

Re: No. 46169 - ERICH KOKER, et ux, v. NOEL B. SAGE, et ux, et al
(Court of Appeals Cause No. 4916-I)

Counsel:

Following a hearing on July 20, 1979, the following Notation Order was entered on page 506, in Volume 14, of the Motion Docket:

"MOTION TO MODIFY RULING
(COMMISSIONER'S):

DENIED.

/s/ Charles F. Stafford,
Acting Chief Justice."

Very truly yours,
John J. Champagne
JOHN J. CHAMPAGNE
Clerk

JJC:je

Appendix A-14

RS" IN A RULING BY
TION TO MODIFY
RT JUSTICES - -
) WRONGDOING

S
Beatrice E. Koker
Beatrice E. Koker

APPENDIX

A - 15(a)(b)

A - 15(c)

A - 15(d)

A - 16

A - 17(a)(b)

A - 18(a)(b)

A - 19

A - 20

A - 21

A - 22

A - 23

A - 24

APPENDIX

RECEIVED
AUG 7 1979
CLERK OF SUPREME COURT
STATE OF WASHINGTON

FILED
SUPREME COURT
STATE OF WASHINGTON
JUL 7 PM 2:00
JOHN KLEPPINGER
CLERK
BY

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

ERICH KOKER and BEATRICE E. KOKER, husband and wife, Plaintiffs/Appellants/Petitioners, v NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR. Defendants, Respondents.	) STATE OF WASHINGTON NOTICE OF APPEAL FROM SUPREME COURT OF THE STATE OF WASHINGTON. . #45846 SUPREME COURT OF THE STATE OF WASHINGTON #46169 PERTAINING TO . . #45846 COURT OF APPEALS DIV. I STATE OF WASHINGTON #4916-I

THIS APPEAL IS TAKEN PURSUANT TO 28 U.S.C.A. 1257(3) AND THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

PARTIES TAKING THE APPEAL: BEATRICE E. KOKER and ERICH KOKER, PLAINTIFFS/APPELLANTS/PETITIONERS/PRO SE

JUDGMENT APPEALED FROM:

APPEALING: AFFIRMATION IN THE COURT OF APPEALS DIVISION I OF THE DENIAL OF "NEW TRIAL OR IN THE ALTERNATIVE ADDITUR" CR 59 (1)(2)(3)(4)(5)(6)(7)(8)(9). ADDITUR TO BE TO $4,600. WHICH WAS AWARDED FOR A. DROP FOOT INJURY, PLUS OTHER.

APPEALING: SUPREME COURT DENIAL OF PETITION FOR REVIEW. EN BANC

APPEALING: THE ENTIRE WRITTEN OPINION DECISION OF THE COURT OF APPEALS AND MOTION FOR RECONSIDERATION DENIED.

APPEALING: DEPRIVATION OF CONSTITUTIONAL RIGHT OF "DAY IN COURT" BECAUSE "REHEARING" IS ABOLISHED IN THE SUPREME COURT OF THE STATE OF WASHINGTON. RULE ROA I-50 REPEALED.

APPEALING: PREMATURE ISSUANCE OF MANDATE IN COURT OF APPEALS. MOTION FILED BEFORE MANDATE ISSUED, APPELLATE COURT RULED AND DENIED. THE MANDATE WAS ISSUED WITHIN 24 HOURS OF NOTIFICATION OF DENIAL OF MOTION. DENIAL OF DUE PROCESS OF LAW ESTOPPING RIGHT TO ASK REVIEW OF MOTION DENIED.

APPEALING: RECALL OF MANDATE DENIED BY THE COURT OF APPEALS.

APPEALING: DENIAL OF DISCRETIONARY REVIEW PAPERS IN A RULING BY THE SUPREME COURT COMMISSIONER. MOTION TO MODIFY RULING TO THE HONORABLE SUPREME COURT JUSTICES - - DENIED. SUBJECT MATTER: DECEIT AND WRONGDOING

Erich Koker Beatrice E. Koker

Appendix A-15(a)

1-206-783-6998
Beatrice E. Koker

RECEIVED
AUG 7 1979
CLERK OF SUPREME COURT
STATE OF WASHINGTON

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

APPEALING:) THE NON-USE OF EXTRA-ORDINARY POWERS ON APPEAL BY RULE RAP 1.2 WASHINGTON COURT RULES AND RCW 2.28.150 FOR JUSTICE REMEDY AND REDRESS.

APPEALING:) THE PROCEDURES USED TO RESTRAIN VITAL LETTER-EVIDENCE FROM EVER REACHING THE JUDGES OF THE SUPREME COURT OF THE STATE OF WASHINGTON FOR A DECISION THAT COULD HAVE (a) PROPERLY ALLOWED RECALL OF PREMATURE MANDATE, (b) REVIEW OF MOTION ESTOPPED BY PREMATURE MANDATE, (c) REOPENED PETITION FOR REVIEW, (d) REVERSED.

APPEALING:) UNFAIR TRIAL. CONFUSION OF JURY VOTING CRIMINAL DETERMINATION OF "GUILT" OR "INNOCENCE" FOR THE VICTIM OF PERMANENT PERSONAL INJURIES IN A DEFENSE ADMITTED LIABILITY.

APPEALING:) NO REMEDY OR REDRESS GIVEN FOR UNFAIR TRIAL OR THE PROVEN DECEIT, UNTRUTHS, MISLEADING THE JURY AND THE COURT, CONFUSION, MISREPRESENTATION OF FACT, AND CONCEALMENT. DISREGARD OF PROVEN WRONGDOING IN TRIAL.

APPEALING:) THE VICTIM IS PENALIZED FOR WRONGFUL ACTS OF OTHERS IN TRIAL AND NO RELIEF ON APPEAL.

APPEALING:) BROKEN PROMISES OF A "FAIR TRIAL" AND "DAY IN COURT" WHICH ARE CONSTITUTIONAL PROVISIONS OF THE UNITED STATES OF AMERICA FOR EVERY CITIZEN THEREIN.

APPEALING:) ALL ADVERSE JUDGMENTS AND RULINGS ON APPEAL IN THE APPELLATE STRUCTURE IN THE STATE OF WASHINGTON.

APPEALING:) A TRIAL OF ERRORS, WHICH THE CONSTITUTION FORBIDS.

COURTS APPEALED FROM:)
THE STATE OF WASHINGTON SUPREME COURT . . . . . .
THE STATE OF WASHINGTON COURT OF APPEALS DIVISION I . . . . . .

FINAL WORD OF FINAL STATE COURT:) July 20, 1979

COPY TO:
WASHINGTON STATE SUPREME COURT
Olympia, Washington
COURT OF APPEALS DIVISION I
Seattle, Washington
Kenneth L. LeMaster and R. Scott Fallon - 4333 Brooklyn Ave NE
Seattle, Washington Defense Attys.

Beatrice E. Koker, Pro Se
Erich Koker
939 - North 105th St.
Seattle, Washington 98133
Telephone: 783-6998

Subscribed and Sworn to before me this ... day of ... A.D. 19...
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
residing at ...

appendix A-15 (b)

Seattle, Washington 98133
1-206-783-6998
Beatrice E. Koker

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

September 18, 1979

Mrs. Beatrice E. Koker
939 North 105th Street
Seattle, Washington 98133

Re: Erich Koker, et al. v. Noel B. Sage, et al., A-232

Dear Mrs. Koker:

Your application for an extension of time in which to docket an appeal in the above-entitled case has been presented to Mr. Justice Rehnquist who, on September 17, 1979, signed an order extending your time to and including November 19, 1979. A copy of the Justice's order is enclosed.

Please notify opposing counsel of this action.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By Patricia A. Dean
Patricia A. Dean
Assistant Clerk

th
Enc.

Appendix A-15 (c)

Supreme Court of the United States

No. A-232

ERICH KOKER, ET UX.,

Appellants,

v.

NOEL B. SAGE, ET AL.

O R D E R

UPON CONSIDERATION of the application of the appellants,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including November 19, 1979.

/s/ William H. Rehnquist
Associate Justice of the Supreme
Court of the United States

Dated this 17th

day of September, 1979

Appendix A-15(d)

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. Champagne

DATE: 8/7/79

FROM : Bruce Rifkin, Chief Deputy

SUBJECT: Today I spoke to the Clerks Office of U.S. Supreme Court. They said that pursuant to Rule 10 a notice of appeal is to be filed with the court possessed of the record, in this case your court. You only need give the appeallant a copy of this notice with your recieved or filed stamp on it & file the original away. The Appeallant sends this copy of the notice to the Supreme Court. If you have any questions please call.

Appendix A-16

OUT

8-29 4916-I-II I

County No. Judge

CRIMINA

CIVIL Indigent

DISC. RE

PERSON. RESTRAI

PETS/RE

Appellant/Petitioner | Counsel | Respondent

Fee Paid _____ Fee Paid _____

Date	Filings and Proceedings
7/27/79	Vols. I-V of VRP checked out to Frederick V. Betts, to be returned by Sept. 6, 1979.
8/9/79	Request from Beatrice E. Koker for Certification of Record/Transmittal of Record
8/21/79	Mrs. Koker advised that certification of record not necessary at this time

Affidavit: I do certify by affidavit this copy of Docket Card obtained from The Court of Appeals Division I - Seattle, Washington on September 10, 1979 at .15¢ per copy by Plaintiff/Appellant/Petitioner pro se.

(This is a xeroxed copy of a xeroxed copy)
(Last page only)

Beatrice E. Koker
939 N. 105th St Seattle, Wa. 98133

appendix A-17 (a)

4916-I-II III

County No. Judge

CRIMINAL

CIVIL Indigent

DISC. REV.

PERSONAL RESTRAINT

PETS/REV.

Appellant/Petitioner | Counsel | Respondent

Fee Paid _____ Fee Paid _____

Date	Filings and Proceedings
7/27/79	Vols. I-V of VRP checked out to Frederick V. Betts, to be returned by Sept. 6, 1979. Entire file checked out 8-1-79.
8/9/79	Request from Beatrice E. Koker for Certification of Record/Transmittal of Record
8/21/79	Mrs. Koker advised that certification of record not necessary at this time
9/11/79	Per phone conversation, Mr. Betts extended return date on file to September 24, 1979 (wb)
9/12/79	Pouches returned by Mr. Betts.

Affidavit: I do certify by affidavit this copy of Docket Card was obtained by Beatrice Koker, Plaintiff/appellant/Petitioner pro se from The Court of Appeals Division I Seattle, Washington on September 12, 1979.

(This is a xeroxed copy of a xeroxed copy)
(Last page only)

Beatrice E. Koker

appendix A-17 (b)

MOTION
SPECIAL ACCELERATED PROCEEDINGS

ERICH KOKER and BEATRICE B. KOKER, husband and wife, Plaintiffs/Appellants/Petitioners, V NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, Jr. Defendants/Respondents.	IN THE SUPREME COURT OF STATE OF WASHINGTON #45846 Supreme Court of State of Washington #46169 Re: #45846 Supreme Court of State of Washington #4916-I Court of Appeals Division I - State of Washington
ORIGINAL FILE RELEASED TO ADVERSARY IN PENDING CIVIL ACTION - 46 days	RE-CERTIFY ORIGINAL RECORD ORIGINAL RECORDS REMOVED 46 DAYS - BY LITIGANT

IDENTITY OF MOVING PARTY:

Beatrice B. Koker, pro se, plaintiff/appellant/petitioner, identified as the recipient of injustice AGAIN in my own state. A 58 year-old pro se woman is not exactly welcome in the courts, especially if she is right. This opinion is not devised from supposition but learned from long, hard, sad experience as pro se.

UNCONSTITUTIONAL DEED:

THE ORIGINAL RECORDS, AND PAPERS, EXHIBITS, THE ENTIRE FILE ORIGINALLY FILED ON APPEAL, INCLUDING THE POUCH, WAS RELEASED OUT OF THE JURISDICTION, OFF THE PREMISES, OUT OF THE CUSTODY OF THE COURT OF APPEALS DIVISION ONE FOR 46 DAYS WITH 12 EXTRA DAYS GRANTED IN AN EXTENSION OF TIME TO KEEP THE ORIGINAL RECORDS.

I AM ON APPEAL TO THE UNITED STATES SUPREME COURT. THE COURT OF APPEALS DIVISION I WAS SO NOTIFIED AUGUST 8, 1979 AFTER THE TIMELY FILING OF NOTICE OF APPEAL IN STATE SUPREME COURT OF WASHINGTON AUGUST 7, 1979. (Final ruling in Washington July 20.)

THERE IS ALSO A PENDING CIVIL ACTION IN SUPERIOR COURT FILED JUNE 7, 1979. THE COMPLAINT IS BASED UPON EVIDENTIARY PLEADINGS TAKEN AND PROVEN FROM THE REPORT OF PROCEEDINGS RELEASED TO PETITIONERS ADVERSARY 46 DAYS. THE CIVIL ACTION IS FOR MAL-PRACTICE, CONSPIRACY TO DENY ME A FAIR TRIAL, CIVIL RIGHTS, OUT-RAGE.

(Cont'd)

Beatrice B. Koker
939 - North 105th St.
Seattle, Washington
Beatrice E. Koker

appendix A-18 (a)

UNCONSTITUTIONAL DEED: (Cont'd)

I KNOW THE SERIOUSNESS OF THIS "UNDER COLOR OF LAW" CONSTITUTIONAL WRONG THAT HAS BEEN COMMITTED. ONLY THE JUDGES OF THE STATE SUPREME COURT CAN ORDER PROPER RE-CERTIFICATION AND THIS IS THE PURPOSE OF THIS SPECIAL ACCELERATED PROCEEDING MOTION.

WASHINGTON STATE RULES OF COURT

RULES FOR THIS MOTION:

RAP 17.7:	This motion is to be ruled upon by the State Supreme Court JUDGES ONLY. This is NOT TO BE ruled upon by any commissioner or Clerk of any court or anyone other than the State Supreme Court JUDGES. I am sending nine copies of this motion as per all proceedings since February 1979 because the Petition for Review was en banc. A motion with the ramifications envisioned needs nine opinions.
RAP 16.17:	OTHER RULES APPLICABLE FOR SPECIAL PROCEEDINGS.
RAP 18.12	ACCELERATED PROCEEDINGS.
RAP 1.2 (a)(c):	INTERPRETATION AND WAIVER OF RULES BY COURT.
RAP 4.3:	RULE 4.3 IS BEING USED IN THIS MOTION BECAUSE PETITIONER DOES NOT WANT TO BE IN THE COURT OF APPEALS DIVISION I FOR ANY REASON ANY TIME. PRIOR TO THIS MOTION, RULE 4.3 WAS USED BEFORE TO BE RELIEVED OF THE JURISDICATION OF COURT OF APPEALS DIVISION I - STATE OF WASHINGTON. THE COURT OF APPEALS DID NOT PROTECT THE *ORIGINAL FILE RECORD OF BEATRICE KOKER.
RCW 2.28.150:	EXTRAORDINARY POWERS OF THE STATE SUPREME COURT

STATEMENT OF RELIEF SOUGHT:

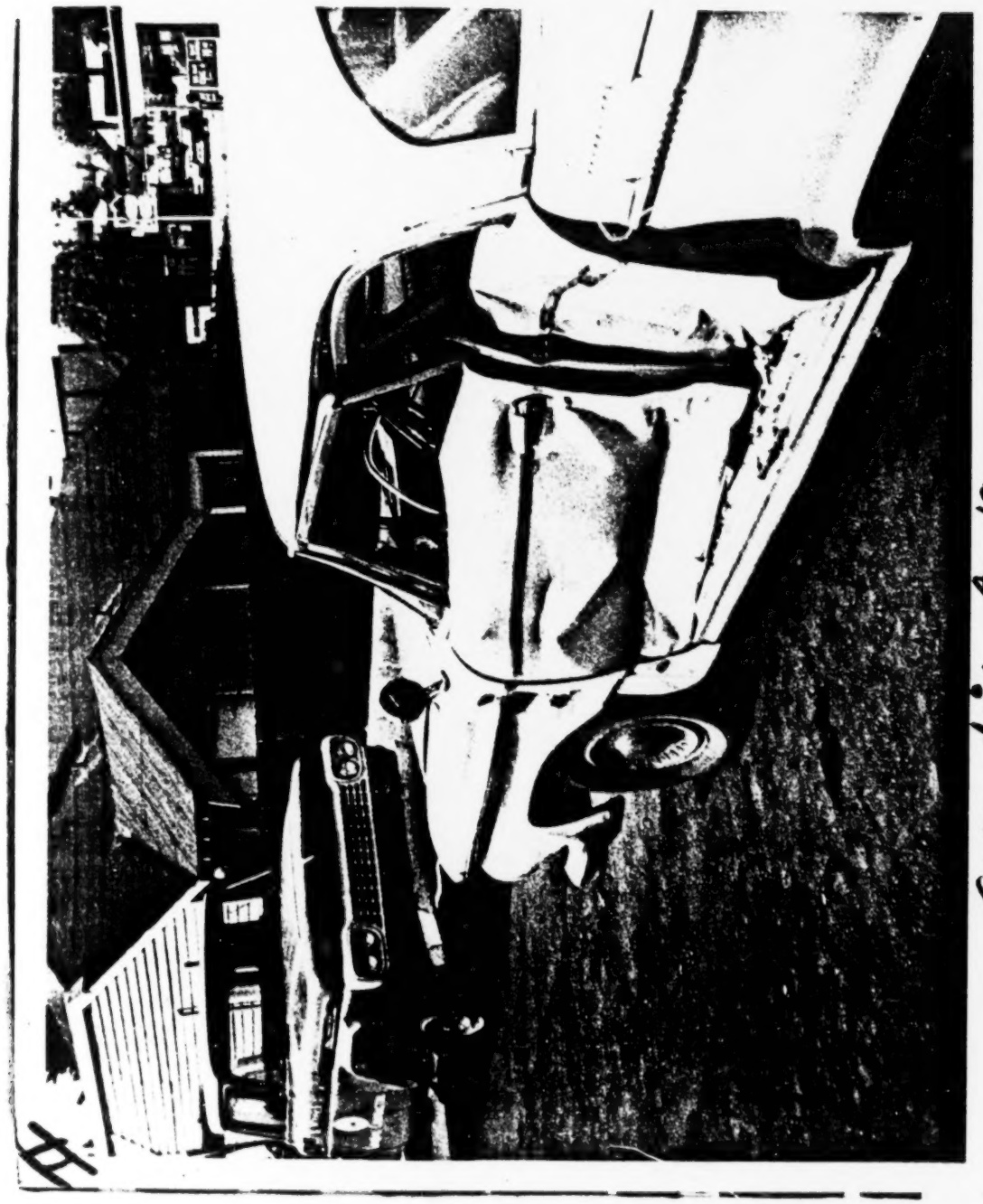
Proper re-certification of entire original record, by the State Supreme Court of the State of Washington.

(Cont'd)

Beatrice B. Koker
939 - N. 105th St.
Seattle, Washington
783-6998
Beatrice E. Koker

Appendix A-18 (b)

Trial Exhibit #7



Appendix A 19

ISSUE RAISED FOR FIRST TIME ON APPEAL - DELAY

RULE 2.5 PUBLIC INTERREST TO RETURN RESPECT FOR COURT SYSTEM

A TRIAL FOR THE CASE OF KOKER V SAGE WAS SET FOR JUNE 3, 1974. JUST 18 DAYS PRIOR TO THAT TRIAL, THE DEFENSE ATTORNEY KENNETH L. LeMASTER OBTAINED A CONTINUANCE BECAUSE OF "CONFLICT OF TRIAL DATES." A "MOTION" IS NOT A TRIAL. TRIAL KOKER V SAGE SET CP 158 File #5 773620

CASE 755199 LUNT v CITY OF SEATTLE CP File 21. GRIEVE AND LAW STAMPED RECEIVED NOTE FOR MOTION DOCKET FROM KENNETH L. LeMASTER MAY 7, 1974. 5 WORKING DAYS NOTICE FOR A MOTION WHICH SHOULD HAVE PUT THE HEARING APPROX. MAY 13, 1974. THERE IS AN ERASURE EVIDENT ON THE ORIGINAL DATE IN THE COPY CP WHICH DOES NOT SHOW ON XEROXING. THE DATE IS CHANGED TO JUNE 3, 1974 - WHICH WAS TO HAVE BEEN MY TRIAL DATE POSTPONED BY CONTINUANCE BY THE DEFENSE ATTORNEY. THE CONTINUANCE STATES "CONFLICT OF TRIAL" . . .A MOTION IS NOT TRIAL.

COURT MINUTES MOTION AND SHOW CAUSE CALENDAR MONDAY JUNE 3, 1974, HONORABLE JUDGE GEORGE W. REVELLE DEPT 17 * LUNT V CITY OF SEATTLE HEARD. KENNETH L. LeMASTER PRESENT AT THE MOTION OF CASE 755199 INSTEAD OF AT TRIAL FOR KOKER V SAGE. ALL PAPERS AND PROOF IN APPENDIX PAGE A-12 .

DELAY: MISTRIAL 1975: FEBRUARY 10, 1975 ENDED IN MISTRIAL. DEFENSE ATTORNEY LeMASTER CLAIMED DR. SATA REFUSED TO TESTIFY: SEE: APPELLANTS' ANSWER TO RESPONDENTS CIVIL APPEAL STATEMENT AUGUST 23, 1976 p 3/2-29: p 4/2-26: SEE: DR. SATA DEPOSITION SUBMITTED TO COURT OF APPEALS RULE 11.5(d) DECEMBER 14, 1977: DEPOSITION PAGE 25/20-25: p 26/1-4: SEE: APPELLANTS REPLY BRIEF: p 1:

SEE: RP VOL I p 4/20-25: p 5/1-11: THE DOCTOR HAD TESTIFIED IN DEPOSITION TO THE CONTRARY, (SEE ABOVE) AND DID NOT REFUSE TO TESTIFY AS PROOF ENCLOSED BY APPELLANT IN ANSWER TO RESPONDENTS' CIVIL APPEAL ST. DR. SATA MENTIONED 58 Times p 31 APPELLANTS OPENING BRIEF.

Appendix A-20

2/7/75 A. A Sola called - I don't do EMG.
kms

2/14/75 2 phone call re Court appearance - I can't. LeMaster - atty for defense
Atty Betts denies my deposition or letters to be introduced.
I can testify after week-end.
Could today exc-post holiday - BEK

6-18-75 - #3 for 499.00

8/20/75 Deposition 9Am-6:45 PM (2½+45")
her trial date is 11/18/75
Result = AJ + KJ - 0
Cc of 25 pages Each to LeMaster via Dan Cannon - Court Reporter
atty F. Betts 1833 Pacific Bldg
Seattle 98104
622-3110

X Deciphered from above.

2/7/75 A- A Sola Called - - I don't do EMG.

2/14/75" 2 phone call be Court appearance - I can't. LeMaster - atty for defense

Atty Betts denies my deposition or letters to be introduced

I can testify right after week-end

Could today exc-post holiday BEK

Appendix A-21

ARTHUR W. FREIDINGER, M. D.
PSYCHIATRY
1800 CABRINI MEDICAL TOWER
901 BOREN AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE 682-3266

June 19, 1978

To Whom It May Concern:

I have known Beatrice Koker since my first examination of her on April 9, 1976, and we have counseled every few months since her trial. I believe there has been considerable misunderstanding of her claims and her case, resulting in unfairness to her. Therefore, I would urge that she have another trial.

Sincerely,

Arthur W. Freidinger

Arthur W. Freidinger, M. D.

AWF/cm

* *

July 23, 1974

TO WHOM IT MAY CONCERN:

It has been my privilege to know Mrs. Erich (Beatrice) Koker for a number of years.

I hold her in the highest regard as a highly intelligent person of unassailable integrity, honesty, and character, to which should be added "courage."

Should detail or example be desired, the reader is invited to communicate directly with the undersigned,

Robert A. Keene

Robert A. Keene
6242 36th Avenue N.E.
Seattle Washington

Appendix A-22

JOHN J. CHAMPAGNE
CLERK

REGINALD N. SHRIVER
DEPUTY

The Supreme Court

State of Washington

Olympia
98504

753-5087
AREA 206

October 10, 1979

Ms. Beatrice Koker
939 N. 105th Street
Seattle, Washington 98104

Mr. Kenneth LeMaster
Mr. R. Scott Fallon
4333 Brooklyn N.E.
Seattle, Washington 98105

Dear Mrs. Koker & Mr. LeMaster:

Re: Supreme Court Nos. 45846 & 46169 - Erich Koker and Beatrice E. Koker v. Noel B. Sage and Winetta Sage, et al.

Mrs. Koker's "Motion for Special Proceedings" was received on October 2, 1979. Our records indicate that Petition for Review in cause number 45846 and Motion for Discretionary Review (entitled Notice of Appeal) in cause number 46169 was denied July 20, 1979.

Although this Court no longer has jurisdiction over the referenced cases because of the denials, the files are in storage in this Court.

In the event the United States Supreme Court grants certiorari on these cases, it will then be timely to consider the manner in which the "Motion for Special Proceedings" will be handled by the appellate courts, and accordingly said motion will be filed without further action at this time. The files are, of course, available for inspection in this office at any time.

Very truly yours,

JOHN J. CHAMPAGNE
Clerk

JJC:dd

Appendix A-23

SECOND MOTION

SPECIAL ACCELERATED PROCEEDINGS

ERICH KOKER and BEATRICE E. KOKER, husband and wife, Plaintiffs/Appellants/Petitioners, V NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, Jr. Defendants, Respondents.	IN THE SUPREME COURT OF THE STATE OF WASHINGTON #45846 Supreme Court Of State Of Washington #46169 Re: #45846 Supreme Court Of The State Of Washington #4916-I Court of Appeals Division I - State of Washington
PENDING APPEAL TO THE UNITED STATES SUPREME COURT PENDING CIVIL ACTION SUPERIOR COURT	RECERTIFY ORIGINAL RECORDS MOTION: TO ACT ON MOTION I UNDER THOSE RULES THEREIN STATED.

November 13, 1979

IDENTITY OF MOVING PARTY:

Beatrice E. Koker, Pro Se. Plaintiff: Superior Court -

Appellant: Appellate Court -

Petitioner: State Supreme Court

Unconstitutional Deed:

The original records, papers, exhibits, the entire file on #4916-I released out of the jurisdiction and custody of the Court of Appeals Division I for 46 days, with 12 extra days extension of time. The file removal was not docketed until this pro se discovered the records missing.

Pending Appeal: There is a pending appeal to the United States Supreme Court, a fact which the Court of Appeals Division I knew as per sending copy of the appeal certified mail to them.

Motion Rules: RAP 17.7: RAP 16.17: RAP 18.12: RAP 1.2 (a)(c): RAP 4.3: RCW 2.28.150

This "under color of law" misdeed is to be ruled upon by the State Supreme Court Judges ONLY. This kind of matter is too serious an issue for anyone else to rule. Please go by Motion I.

Appendix A-24

STATEMENT OF RELIEF SOUGHT:

(1) Proper recertification of the entire record original file removed from the appellate court. This is a serious Constitutional Question under 28 U.S.C.A. 1343 (1)(2)(3)(4): 28 U. S. C. A. 1738: 42 U.S.C.A. 1983-1984-1985: 28 U. S. C. A. Rule 1:

(2) Terms and sanctions for:

(a) The State Supreme Court because the records were gone and already in the possession of the adversary out of the custody of the Court when I filed the appeal to the United States Supreme Court. The Clerk of the State Supreme Court indicated the records were in Olympia. See: Appendix A-1: Memo From Deputy Federal Court stating Mr. Champagne Had The Records In Supreme Court.

(b) The Court of Appeals Division I who obtained the records and released the entire file, not even docketing same until after discovery by petitioner that the files were missing.

(c) The recipient who received the original file. Having been an attorney over 40 years he knows the rules of the court and the law of the land and the pending civil trial based upon the Original Report of Proceedings in an Evidentiary Complaint.

(3) I have not asked for any monetary sanctions for myself as that would be a mercenary motion.

FACTS RELEVANT TO MOTION:

Honorable John J. Champagne replied to Motion I that he had filed the motion, and no further action would be taken at this time. The terms and sanctions include the Clerk of the State Supreme Court and for him to make a decision could be considered "conflict of interest." No terms and sanctions will be taken when the motion has been "shelved," thus inaction upon a Motion and protection from sanctions and terms for all responsible.

Mr. Champagne is under the impression the Jurisdictional Statement of this petitioner will not be accepted by the United States Supreme Court and he assumes in that case, the certification problem would not be relevant. Mr. Champagne did not take into consideration the current need for the records for the Superior Court. I reiterate the Rules and Purpose of the first motion and ask for a ruling by the Washington State Supreme Court.

FACTS RELEVANT TO MOTION: (Cont'd)

28 U.S.C.A. 1738 Note 25 indicates that any court receiving a certified record does not even have to ask of the clerk of the supreme court has had custody of the original file since it was filed. That fact is assumed because the rule is so stringent no one gets roginal files from the courts unless the court so orders for another proceeding in another court.

Shocking: It is shocking to realize that if I had not come into the appellate court for one copy of a page, and discovered the file missing, those original files would have been out of the jurisdiction of the court for a total of 58 days, or longer, then sent back to the Supreme Court of Washington and nobody would have known. A thought: How many times could this have happened before? NO ONE WOULD HAVE KNOWN OF THE CONSTITUTIONAL DISREGARD FOR THE RIGHTS OF A LITIGANT UNLESS THERE IS "DISCOVERY" BY CHANCE?

GROUNDS FOR RELIEF AND ARGUMENT:

The Clerk of the State Supreme Court knows that removal of those original files is constitutionally wrong and an act "under color of law." The Supreme Court Clerk knows I am 100% for the courts in spite of what has happened herein, and also in denial of justice on appeal in this state. I am not angry. I am very disappointed, disillusioned, distressed, outraged, and the blood pressure is elevated. Please undo the wrong of allowing original records out of your custody into the custody of a litigant. Please recertify the original file to the satisfaction of the United States Supreme Court for this pending appeal.

Mr. Champagne says the State Supreme Court no longer has jurisdiction over the case but the files are in storage in that court. It is my right to have the original records protected in the appellate courts of this state until the finality of the entire outcome of the United States Supreme Court. In defiance of all that is fair and just and in a deliberate way, the original files were given out and away from the court for a lengthy period of time. There is no way to excuse nor understand this wrong act.

GROUNDS FOR RELIEF AND ARGUMENT: (Cont'd)

Beatrice B. Koker, Petitioner, pro se, realleges Motion I Special Accelerated Proceedings as set forthe therein and asks consideration now. Will you please help me?

II CITATION II USCA Constitution Amendment 14 §1 Note 155

"Neither the label which a state places on its own conduct, nor even the legitimacy of its motivation, can avoid the applicability of this Constitution."

"Where the individual has a constitutional right, and the state has a correlative constitutional duty which it deliberately fails to perform, there is state action within this amendment."

In the event Mr. Champagne did not consider the current civil action in superior court, it is respectfully asked again that the Motion For Special Accelerated Proceedings be presented to the Judges Only of the State Supreme Court for recertification of the records to absolute original status that will be acceptable to the United States Supreme Court.

Special Accellerated Proceedings is realleged as set forth herein and I am respectfully asking for help in this matter. Should the pro se be on the defensive when I have not done the wrong? When there is an act "under color of law" and the recipient of that act is willing to go out of her way to be decent and pleasant and cooperative can not you help in return to undo something that is definitely a serious infringement on the rights of anyone?

Respectfully submitted,

Beatrice E. Koker

Beatrice B. Koker, pro se
939 - North 105th Street
Seattle, Washington 98133
783-6998

Copy Sent Certified Mail To:

Court Of Appeals Division I

Kenneth L. LeMaster and
R. Scott Fallon, Defense
Attorneys 4333 Brooklyn Ave NE
Seattle, Washington 98185

APPENDIX

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APPENDIX

[***] CITATION: MODERN LEGAL FORMS Ch 4 p 383 § 381. Definition.

"An affidavit is a written statement sworn to or affirmed before an authorized officer. Where used in judicial proceedings it is sometimes defined as a voluntary statement made ex parte without giving the adverse party either notice or an opportunity to cross-examine."

Mr. Wood dictated the affidavit statement to me. The statement was typed verbatin and read back to him. He re-read before signing the affidavit before a Notary. His sworn testimony is verification of the truth of the facts of confusion and not understanding by the jurors as proclaimed by appellant from the beginning to the end. The 11 month pro se Sequence-Search now ended.

—

Case #773620 Koker V. Sage

STATE OF WASHINGTON, } ss.
County of KING }

GENERAL AFFIDAVIT

Trial by jury June 9, 1976 through June 15, 1976. King County Superior Court, Honorable Donald J. Horowitz, Presiding.

Stephen M. Wood 7712 Dayton Avenue North Seattle, Washington being first duly sworn on oath deposes and says:

That

I, Stephen M. Wood, Foreman of the Jury in the above mentioned case of Koker v. Sage, relate by this affidavit there was a problem of confusion on the jurors' part in deliberation, whether we were supposed to find the guilt or innocence of Mrs. Koker.

In jury deliberation of this case, it was a time consuming effort of approximately 2 hours for me to convince the jurors there was no guilt or innocence of Mrs. Koker involved but only the damages to be determined.

We, the jury, went through a voting process to establish the innocence of Mrs. Koker and I, the jury foremen, explained no guilt of Mrs. Koker was involved. That the boy had admitted liability for the accident and was at fault.

Stephen M. Wood

Subscribed and sworn to before me this 22nd day of June, 1977

D. Brady

Notary Public in for the State of Washington residing at Seattle

My commission expires Sept 23, 1977.

GENERAL AFFIDAVIT
Washington Legal Blank Co., Bellevue, Wa. Form No. 432

—

AFFIDAVIT GENERAL FORM
Washington Legal Blank Co., Bellevue, Wa. Form No. 38

appendix B-1

State of WASHINGTON } Kenneth L. LeMaster, Defense Attorney
County of KING } R. Scott Fallon, Defense Attorney
Frederick Fetts, Plaintiff Attorney
Beatrice E. Koker, Plaintiff Appellant

ORAL ARGUMENT APPELLATE COURT PROCEEDINGS

PACIFIC BUILDING FEBRUARY 22, 1978 (Afternoon Session)

CASE 4916-I King County #773620 KOKER V SAGE

State of WASHINGTON } ss.
County of KING }

Before me, Delores Gilbert a NOTARY

in and for the County of KING State of WASHINGTON

residing at SEATTLE

personally came STEPHEN M. WOOD

7712 Dayton Avenue North Seattle, Washington

who, being by me duly sworn ON OATH according to law, deposes and says, that

I was at the oral argument as an interested bystandor and to lend my support even though Mrs. Koker had no idea I was there.

Both defense attorneys, Mr. LeMaster and his associate were in the hall outside the Court of Appeals, February 22, 1978. Mr. Fetts came out of the elevator.

Mr. LeMaster said: "Hi Fred. What are you doing here?"

Mr. Fetts said: "I came to see what the old lady has on us."

Mr. Fetts and Mr. LeMaster's associate went downstairs and Mr. LeMaster went back to the courtroom.

When the proceedings for Beatrice Koker started after the recess, there was a change of judges.

Mr. Fetts looked up at the judges and said: "Oh God no, not him." And put his head between his hands.

Stephen M. Wood

Stephen M. Wood
7712 Dayton Avenue North
Seattle, Washington

AFFIDAVIT GENERAL FORM
Washington Legal Blank Co., Bellevue, Wa. Form No. 38

appendix B-2

State of WASHINGTON
County of KING

Kenneth L. LeMaster, Defense Attorney
R. Scott Fallon, Defense Attorney
Frederick V. Betts, Plaintiff Attorney
Beatrice E. Koker, Plaintiff

PERSONAL INJURY TRIAL - KOKER V SAGE CASE 773620
SUPERIOR COURT - KING COUNTY COURTHOUSE JUNE 11, 1976
HONORABLE JUDGE DONALD J. HOROWITZ PRESIDING

State of WASHINGTON
County of KING
ss.

Before me, B Ambler a NOTARY
in and for the County of KING State of WASHINGTON
residing at Seattle King County Wa.
personally came BONNIE BROWN
714 - North 103rd Street Seattle, Washington 98133
who, being by me duly sworn ON OATH according to law, deposes and says, that

J. G. AMBLER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES MAY 10, 1981

I, as a witness, was requested by Mr. LeMaster, defense attorney, to leave the courtroom until my time to take the witness stand. When Mrs. Koker came out into the hall from the courtroom, she said the court was recessed for lunch.

Wanting to ask Mr. Betts a question, I returned to the courtroom just at the beginning of the noon lunch hour. The Judge had left the Courtroom.

Mr. Betts and Mr. LeMaster and the second defense attorney of whom I did not know his name, were standing on the right side of the Judge's bench near the witness chair, with their backs to the back of the courtroom and they were talking in low tones. No one else was in the courtroom when I walked up to the attorneys and I heard Mr. LeMaster say to Mr. Betts:

"Fred, I can't lose this trial."

Mr. Betts said to Mr. LeMaster:

"Ken, you don't have anything to worry about."

Then the three attorneys turned around, apparently not knowing I was there, and all three had a shocked and stunned look to see me standing there.

Bonnie Brown
BONNIE BROWN
714 - North 103rd Street
Seattle, Washington 98133

appendix B-3

State of WASHINGTON
County of KING

Kenneth L. LeMaster, Defense Attorney
R. Scott Fallon, Defense Attorney
Frederick Betts, Plaintiff Attorney
Beatrice E. Koker, Plaintiff Appellant

ORAL ARGUMENT APPELLATE COURT PROCEEDINGS
PACIFIC BUILDING FEBRUARY 22, 1978 (Afternoon Session)
CASE 4916-I King County #773620 KOKER V SAGE

State of WASHINGTON
County of KING
ss.

Before me, B Ambler a NOTARY
in and for the County of KING State of WASHINGTON
residing at Seattle King Wa
personally came REV. DANIEL L. SABROWSKY
11051 - Phinney Avenue North Seattle, Washington
who, being by me duly sworn ON OATH according to law, deposes and says, that

I was present in Appellate Court on February 22, since I had an interest in Mrs Beatrice Koker's case, being her pastor. I had also been present for the court proceeding which is under appeal, hence I recognized both Mr. Betts, and Mr. LeMaster. Mrs. Koker's Case was not due for a time, so I was waiting out in the hall. I saw Mr. LeMaster, and Mr. Betts talking together, and was able to hear a portion of their conversation. They were discussing the case of Mrs. Koker; and I heard several derogatory remarks mode about Mrs. Koker. There were two instances of such discussions in the hallway. When I saw the two attornies, Mr. LeMaster and Mr. Betts, together with Mr. LeMaster's associate, go out to the hall again, I also went out. They didnot know me, and apparantly thought that I was an attorney, since they asked if I had a case pending that afternoon.

I am not sure during which discussion the following was said, but it was during one of the two conversations I witnessed in the hallway. Mr. Betts asked Mr. LeMaster - "What's she trying to accomplish?" Mr. Betts also stated - "You have only had to put up with her for a few months, I have had to put up with her for years." Other similar statements were made, but I cannot recall their content.

The hall conversations gave to me the opinion and impression that there was some kind of conspiracy between the two above named attornies against Mrs. Koker.

I did speak to Mrs. Koker prior to the court proceedings on the 22nd, and informed her of what I had overheard.

Rev. Daniel L. Sabrowsky
Rev. Daniel L. Sabrowsky
11051 Phinney Avenue North
Seattle, Washington

AFFIDAVIT GENERAL FORM
Washington Legal Blank Co., Bellevue, Wa. Form No. 28

Appendix B-4

te of WASHINGTON
County of KING

Kenneth L. LeMaster, Defense Attorney
R. Scott Fallon, Defense Attorney
Frederick Betts, Plaintiff Attorney
Beatrice E. Koker, Plaintiff

PERSONAL INJURY TRIAL - KOKER V SAGE Case #773620
SUPERIOR COURT - KING COUNTY COURTHOUSE February 11, 1975
HONORABLE JUDGE DAVID C. HUNTER, PRESIDING
THIS TRIAL ENDED IN A MISTRIAL

State of WASHINGTON
County of SNOHOMISH } ss.

Before me, Jeanne C Young *a* NOTARY
in and for the County of SNOHOMISH *State of* WASHINGTON
residing at Granite Falls
personally came BONNIE BROWN
Lake Connors, Washington - Mailing Address: P.O. Box 284 Lake Stevens, Wash. 98258
who, being by me duly sworn ON OATH *according to law, deposes and says, that*

In the February 1975 trial, as Mrs. Koker was testifying about the procedures of the myelogram and how the doctor took out some of the spinal fluid, I heard Mr. LeMaster say under his breath: Quote:

"Too bad they didn't take all the fluid out of her."

Bonnie Brown

Bonnie Brown
P. O. Box 284
Lake Stevens, Washington 98258

AFFIDAVIT GENERAL FORM
Washington Legal Blank Co., Bellevue, Wa. Form No. 35

appendix B-5

DR. ANDERS E. SOLA

DR. ANDERS E. SOLA, PLAINTIFF TREATING DOCTOR

[a] GRADUATED FROM THE UNIVERSITY OF WASHINGTON - 1950.

[b] TOOK A ROTATING INTERNSHIP AT TACOMA-PIERCE COUNTY HOSPITAL.

[c] RESIDENCY IN PHYSICAL MEDICINE AT THE VETERANS HOSPITAL, PORTLAND, OREGON.

[d] CHIEF, PHYSICAL MEDICINE SERVICE, LACKLAND AIR FORCE BASE HOSPITAL, IN CHARGE OF PHYSIATRY AND REHABILITATION MEDICINE.

[e] PRESENTLY AN APPOINTMENT WITH THE PAIN CLINIC AT THE UNIVERSITY OF WASHINGTON. PRIVATE PRACTICE AT NORTHGATE, SEATTLE, WASH. FOR MANY YEARS.

[f] INVITED TO THE INTERNATIONAL PAIN CONFERENCE, FLORENCE, ITALY- 1975.

#

PERSONAL FRIEND OF:

JANET TRAVELL, M.D. PRIVATE PHYSICIAN TO PRESIDENT LYNDON JOHNSON AND PRESIDENT JOHN F. KENNEDY AND USED DR. SOLA'S TRIGGER POINT NEEDLING USING NORMAL SALINE TECHNIQUE TO TREAT JOHN F. KENNEDY'S BACK PROBLEM. (SEE DR. SOLA'S PUBLISHED PAPERS.)

#

FILM:

ROBERT L. WILLIAMS, M. D.
CHIEF OF PSYCHIATRY AND NEUROLOGY
BAYLOR COLLEGE OF MEDICINE
TEXAS MEDICAL CENTER
HOUSTON, TEXAS 77025

MADE FILM WITH DR. ANDERS E. SOLA WHILE IN THE AIR FORCE IN THE 1950's.

FILM WAS "TRIGGER POINT NEEDLING" USING NORMAL SALINE. FILM WAS SHOWN AT THE AMA NATIONAL CONVENTION IN NEW YORK IN 1973 AND FROM THERE THE FILM WAS SHOWN IN VARIOUS PLACES BY THE MEDICAL DOCTOR WHO HAD IT. PHYSICIAN IN CHARGE: DR. RON MELZACK.

MEDICAL DOCTORS THROUGHOUT THE UNITED STATES REFER PATIENTS TO DR. SOLA. THE PAIN CLINIC AT THE UNIVERSITY OF WASHINGTON REFERS PATIENTS TO DR. SOLA. DR. JOHN BONICA, PROFESSOR AND DIRECTOR OF THE PAIN CLINIC, UNIVERSITY OF WASHINGTON.

DR. SOLA'S WORK IS MENTIONED IN BOOKS BY PHYSICIAN AUTHORS. DR. JANET TRAVELL, DR. WILLIAM A. McGAREY, DR. LOUIS MOSS, DR. [illegible]

appendix B-6

State of WASHINGTON

County of KING

TO WHOM IT MAY CONCERN

REGARDING: BEATRICE E. KOKER, Patient

State of WASHINGTON

County of KING

ss.

Before me, Katherine M. Hutchison a Notary

in and for the County of King *State of* Washington,

residing at 11319 - 8th Ave. N.E. #102 Seattle 98125

personally came Anders E. Sola, M.D., 120 Northgate Plaza, Rm 340, Seattle 98125

who, being by me duly sworn on oath *according to law, deposes and says, that*

Beatrice Koker was injured in an automobile accident June 4, 1971. Initially she sustained an acute cer vical sprain involving the left posterior cervical region and left upper extremity, and a twisting injury to the lumbo sacro region L4, L5, S1.

Mrs. Koker was treated in my clinic for a period of time in 1971, and has intermittently been treated until present. The patient has had multiple complaints and symptoms, many of which were difficult to evaluate. In the head and neck area, these complaints were localized to the left ear and around the left eye, left upper extremity, and left facial area. The most obvious problem was frequent muscle spasm of the left posterior cer vical region. The patient suffered a severe cervical sprain involving nerve root C5, C6 on the left. This was aggravated by the pre-existing minimal osteoarthritis which was present. Mrs. Koker still suffers from frequent episodes of acute torticollis and muscle spasm which I have treated intermittently with injections of xylocaine and saline which brings temporary relief.

In addition, Mrs Koker suffered a severe injury, as mentioned above, involving the lumbo sacro region. This was associated with an Electromyogram evidence of peripheral nerve injury involving nerve roots L4, L5 on the right. There is also muscle weakness in the quadriceps and anterior tibial muscles on the right. Mrs. Koker also has weakness of the left quadricep muscle which causes some instability of her left knee. She requires treatment once or twice a month with injections of xylocaine and saline into the painful trigger points in the gluteal and hip muscles both right and left and also the left posterior cervical region. These injuries are permanent. The lumbo sacro injury has caused a permanent drop foot of the right foot which necessitates the wearing of a short leg brace on the right leg.

Anders E Sola

ANDERS E. SOLA, M.D.

appendix B-7

Ankle Injury

PHONED A.M. P.M.	PROMISED	DELIVER	WILL CALL

FOR B Koker 9/11/75

ADDRESS

℞ Ananase 100 mg

#18

Sig 1 tid 3 days

then 1 bid

195720

REFILL ____ TIMES

SUBSTITUTION PERMITTED M.D. E Henriksen M.D.

DEA NO. Copy of records 2219 AURORA AVENUE NORTH

DATE Bastnall Pharmacist SEATTLE, WASHINGTON 98133 ADDRESS

EINAR HENRIKSEN, M.D.

ORTHOPEDICS AND FRACTURES

120 NORTHGATE PLAZA PHONE 363-8666

FOR Beatrice Koker

ADDRESS DATE 5-3-78

℞ 3116" lateral sole wedge

1/8" lateral heel wedge

left shoe

REPEAT

NON-REPEAT E Henriksen M.D.

U.S. REG. NO.

Left Shoe Lift

appendix B-8

Appendix B-9

Certificate of Membership

Newspaper Institute of America

Approved As A Correspondence School Under The Laws Of The State Of New York

THIS warrant, when validated by the signatures of the Dean and a member of the Editorial Staff of the Newspaper Institute of America, certifies that

MRS. ERICH KOKER

has qualified for membership in the Newspaper Institute of America by satisfactory execution of the Writing Assignments and by discharge of all the obligations imposed by the terms of the application for membership, and is entitled to all privileges existent at the time of application and specific endorsement of the Member's qualifications for employment if the member shall exercise the right hereby conferred to use the Newspaper Institute of America as reference to a prospective employer, in accordance with the record as set forth on the reverse hereof.

Newspaper Institute of America, Inc.

W. K. Monroe
Dean

New York Oct. 27, 1960 Jack B. Chewin
Editorial Department

Appendix B-10

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

ERICH KOKER and BEATRICE E. KOKER, husband and wife,

Plaintiffs,

vs.

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,

Defendants.

NO.

C O M P L A I N T

Plaintiffs complain and allege as follows:

I.

That at all times herein mentioned the plaintiffs were and are husband and wife and residents of King County and that the defendant Noel B. Sage and Winetta Sage were husband and wife, constituting a marital community under the laws of the State of Washington; and that the defendant Noel B. Sage, Jr. is their son. That all actions of Noel B. Sage, Jr. were done for and on his own behalf and on behalf of the marital community of Noel B. Sage and Winetta B. Sage, his wife. That all of said defendants are residents of King County, Washington.

II.

That on or about June 4th, 1971, at approximately 1:00 P.M. the plaintiff, Beatrice Koker, was northbound on Dayton Avenue North, driving their Plymouth Fury automobile, and crossing North 90th Street, when the defendant Noel B. Sage, Jr. was driving a Chevrolet belonging to said defendants in a negligent manner easterly on North 90th Street. That said defendant failed

LAW OFFICES
SKEEL, McKELVY, HENKE, EVENSON & BETTS
1030 NORTON BUILDING
SEATTLE, WASHINGTON 98104
623-1031

Appendix B-11(a)

to bring his vehicle to a stop before entering on Dayton Avenue North and was driving at an excessive rate of speed and operating his vehicle while under the influence of intoxicating liquor.

III.

As a direct and proximate result of the reckless, negligent and careless driving by the defendant Noel B. Sage, Jr. the plaintiff Beatrice E. Koker suffered permanent and lasting injuries, both physically and mentally, which has in the past and will in the future materially affect her ability to carry on a normal life and that by reason of the injuries she has been unable to carry on her normal duties and activities as a member of the marital community composed of herself and her husband, all to their general damages in the sum of $50,000.00.

That the plaintiffs have been required to incur substantial expenses in connection with medical treatment in the past and will be required to incur expenses for medical treatment in the future. That in addition thereto they have incurred additional expenses including medication, assistance in the maintenance of their home, all of which is in an amount uncertain at this time but will be proven at the time of trial.

IV.

That the plaintiffs' vehicle was depreciated in market value in the sum of $750.00.

WHEREFORE, plaintiffs pray for judgment against the defendants and each of them in the amount of $50,000.00 general damages together with medical expenses and other special damages which will be proven at the time of trial, together with $750.00 for depreciation of the automobile, together with plaintiffs' costs and disbursements herein to be taxed.

DATED this 3rd day of August, 1973.

SKEEL, McKELVY, HENKE, EVENSON & BETTS

By F. V. Betts
Frederick V. Betts
Attorneys for Plaintiffs

LAW OFFICES
SKEEL, McKELVY, HENKE, EVENSON & BETTS
1030 NORTON BUILDING
SEATTLE, WASHINGTON 98104
623-1031

Appendix B-11(b)

ANDERS E. SOLA, M. D.
120 NORTHGATE PLAZA, ROOM 340
SEATTLE, WASHINGTON 98125

TELEPHONE EM 3-1616

ELECTROMYOGRAPHIC REPORT

NAME: BEATRICE KOKER		Age	Dr. Dr. Henriksen, Dr. Rothstein
MUSCLES-NECK & UPPER EXTS.	Flex. carpi radialis (C6)	MEDIAN N. forearm	Adductors (L2,3),, OBTURATOR N.
Paraspinal, POST. PRIMARY DIV. N.	Flex. dig. sublimis (C7)		Gluteus med. (L5) — SUP. GLUTEAL N.
C1, C2, C3, C4, C5, C6, C7, C8	Flex. dig. profundus (C7)		Tensor fascia lata (L5)
T1, T2, T3, T4, T5, T6, T7, T8	THENAR GROUP		Gluteus max. (S1) INF. GLUTEAL N.
Sternocleidomast. (C2,3) CR. N. (XI)	Abd. pollicis brev. (C7,8)	MEDIAN N. hand	Hamstrings
Trapezius (C2,3,4) CR. N. (XI)	Opponens pollicis (C7,8)		Biceps femori (L5)
Rhomboid (C5), DORSAL SCAPULAR N.	Flex. pollicis brev. (C8)		Semitendinosus (S1) — SCIATIC N.
Supraspinatus (C5) — SUPRASCAPULAR N.	Flex. carpi ulnaris (C8)	ULNAR N. forearm	Seminembranosus (S1)
Infraspinatus (C5)	Flexor dig. profundus (C7,8)		Tibialis ant. (L4)
Serratus ant. (C5,6,7), LONG THORACIC N.	HYPOTHENAR GROUP		Ext. dig. long. (L5)
Latis. dorsi (C6,7,8), THORACODORSAL N.	Abd. digiti quinti (T1)	ULNAR N. hand	Ext. hallucis long. (L5) — PERONEAL N.
Deltoid (C5) — AXILLARY N.	Opp. digiti quinti (T1)		Peroneus long. (L5)
Teres minor (C5)	Flex. digiti quinti (T1)		Peroneus brev. (L5)
Biceps (C5,6), MUSCULOCUTANEOUS N.	Interossei, 1,2,3,4, (C8,T1)		Gastrocnemius, lat. hd. (S1)
Triceps (C7,8)			Gastrocnemius, med. hd. (S1,2) — TIBIAL N.
Brachioradialis (C5,6)	MUSCLES-LOW BACK & EXTS.		Soleus (L5,S1)
Ext. carpi radialis (C6,7)	Paraspinals, POST PRIMARY DIV. N.		Intrinsic Muscles of the Foot (S1,2)
Ext. dig. communis (C7) — RADIAL N.	T9, T10, T11, T12, L1, L2, L3,		Flex. digiti brev., Abd. hallucis — MED. PLANTAR N.
Ext. carpi ulnaris (C7,8)	L4, L5, S1, S2, S3, S4, S5		Abd. digiti quinti, Interossei, — LAT. PLANTAR N.
Ext. pollicis long. (C7,8)	Iliopsoas (L2) — FEMORAL N.		
Abd. pollicis long. (C7,8)	Quadriceps (L3,4)		

Copy to: Einar Henriksen, M.D. 120 Northgate Plaza, 98125
Ted L. Rothstein, M.D. 1570 N. 115 98125
F. V. Betts, Attorney Norton Bldg. Seattle

An Electromyogram was done on Beatrice Koker, 2-7-75, of both upper extremities, both lower extremities and back. Abnormal potentials were noted in the form of polyphasic potentials and positive sharp waves in the left biceps. The right and left trapezius revealed numerous polyphasic potentials associated with secondary muscle spasm. The right upper extremity was normal and other parascapular muscles were normal.

IMPRESSION: Nerve root irritation C5, 6 on the left, moderate.

Examination of the lower extremities revealed abnormal polyphasic potentials as associated with some fibrillation potentials in the anterior tib and peroneal muscles, on the right. I was unable to detect any abnormal potentials in the lumbar paraspinal muscles. All other muscle groups tested, which included the hamstrings, quadriceps, gastrocsoleus, and anterior tib and peroneal, on the left, were normal.

IMPRESSION: Nerve root irritation L5 on the right, moderate.

I believe the above findings explains her difficulty in walking, also to the temporary effect of injections and physical therapy treatment in the shoulder girdle. I think these findings should be re-evaluated by an orthopedic surgeon.

Anders Sola

ANDERS E. SOLA, M.D.

AES: jv

Appendix B-12

ANDERS E. SOLA, M. D.
120 NORTHGATE PLAZA, ROOM 340
SEATTLE, WASHINGTON 98125

TELEPHONE EM 3-1616

5-27-76

ELECTROMYOGRAPHIC REPORT

NAME: BEATRICE KOKER		Age	Dr. ANDERS E. SOLA, M.D.
MUSCLES-NECK & UPPER EXTS.	Flex. carpi radialis (C6)	MEDIAN N. forearm	Adductors (L2,3),, OBTURATOR N.
Paraspinal, POST. PRIMARY DIV. N.	Flex. dig. sublimis (C7)		Gluteus med. (L5) — SUP. GLUTEAL N.
C1, C2, C3, C4, C5, C6, C7, C8	Flex. dig. profundus (C7)		Tensor fascia lata (L5)
T1, T2, T3, T4, T5, T6, T7, T8	THENAR GROUP		Gluteus max. (S1) INF. GLUTEAL N.
Sternocleidomast. (C2,3) CR. N. (XI)	Abd. pollicis brev. (C7,8)	MEDIAN N. hand	Hamstrings
Trapezius (C2,3,4) CR. N. (XI)	Opponens pollicis (C7,8)		Biceps femori (L5)
Rhomboid (C5), DORSAL SCAPULAR N.	Flex. pollicis brev. (C8)		Semitendinosus (S1) — SCIATIC N.
Supraspinatus (C5) — SUPRASCAPULAR N.	Flex. carpi ulnaris (C8)	ULNAR N. forearm	Seminembranosus (S1)
Infraspinatus (C5)	Flexor dig. profundus (C7,8)		Tibialis ant. (L4)
Serratus ant. (C5,6,7), LONG THORACIC N.	HYPOTHENAR GROUP		Ext. dig. long. (L5)
Latis. dorsi (C6,7,8), THORACODORSAL N.	Abd. digiti quinti (T1)	ULNAR N. hand	Ext. hallucis long. (L5) — PERONEAL N.
Deltoid (C5) — AXILLARY N.	Opp. digiti quinti (T1)		Peroneus long. (L5)
Teres minor (C5)	Flex. digiti quinti (T1)		Peroneus brev. (L5)
Biceps (C5,6), MUSCULOCUTANEOUS N.	Interossei, 1,2,3,4, (C8,T1)		Gastrocnemius, lat. hd. (S1)
Triceps (C7,8)			Gastrocnemius, med. hd. (S1,2) — TIBIAL N.
Brachioradialis (C5,6)	MUSCLES-LOW BACK & EXTS.		Soleus (L5,S1)
Ext. carpi radialis (C6,7)	Paraspinals, POST PRIMARY DIV. N.		Intrinsic Muscles of the Foot (S1,2)
Ext. dig. communis (C7) — RADIAL N.	T9, T10, T11, T12, L1, L2, L3,		Flex. digiti brev., Abd. hallucis — MED. PLANTAR N.
Ext. carpi ulnaris (C7,8)	L4, L5, S1, S2, S3, S4, S5		Abd. digiti quinti, Interossei, — LAT. PLANTAR N.
Ext. pollicis long. (C7,8)	Iliopsoas (L2) — FEMORAL N.		
Abd. pollicis long. (C7,8)	Quadriceps (L3,4)		

An Electromyogram was done on Beatrice Koker, 5-27-76. Examination was done of the paraspinal muscles, the gluteals, were normal. On the right, the tensor fascia lata revealed abnormal potentials in the form of fibrillation potentials and positive sharp waves, minimal. The right anterior tib and peroneal muscles, revealed numerous polyphasic potentials and fibrillation potentials at rest throughout all the dorsi flexors.

The right gastroc soleus also revealed a few scattered fibrillation potentials on the medial head of the gastroc muscle. The right quadriceps and hamstrings were normal.

On the left, no abnormal potentials were noted on the left lower extremity which included, the gluteals, hamstrings, gastroc soleus, dorsi flexors of the foot.

IMPRESSION: Nerve root irritation L4, L5 on the right, marked.

Examination of the cervical area revealed, on the left, a few scattered fibrillation potentials in the left supraspinatus, the anterior portion of the deltoid, and triceps. In addition, the triceps, a few scattered polyphasic potentials were noted at rest. The rest of the parascapular muscles, extensors, flexors of the wrist were normal.

IMPRESSION: Nerve root irritation C5, 6, minimal on the left.

ANDERS E. SOLA, M.D.

AES: jv

Appendix B-12

IN THE

Supreme Court of the United States

NO. 79-776

ERICH KOKER and BEATRICE E. KOKER, husband and wife,
Appellant,

v.

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,
Appellee.

APPELLEE'S MOTION TO DISMISS

ROBERT C. TAYLOR
Attorney for Appellee

Office & Post Office Address:

4333 Brooklyn Avenue Northeast
18th Floor
Seattle, Washington 98185
Telephone: (206) 633-1310

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 79-776

ERICH KOKER and BEATRICE E. KOKER, husband and wife,
Appellant,

v.

NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.,
Appellee.

APPELLEE'S MOTION TO DISMISS

COME NOW Appellees, NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR., and move the Court for dismissal of this appeal, pursuant to Rule 16 of the Rules of the Supreme Court of the United States.

NATURE OF THE CASE

This appeal arises from a civil suit for personal injuries tried in the Superior Court of

the County of King, State of Washington, in June of 1976. The plaintiffs/appellants were represented by counsel, and were awarded judgment in the amount of $4,600.00.

Appellant, proceeding in propria persona, instituted an appeal before the Appellate Court of the State of Washington, which appeal was denied. Appellant further sought review before the Supreme Court of the State of Washington, which was denied. Appellant is now before this Court, apparently because of a claim that she was denied a fair trial.

APPELLANT HAS FAILED TO INVOKE THE JURISDICTION OF THIS COURT

Appellant's first jurisdictional basis is apparently predicated upon the repeal of Rule of Appeal I-50, as a basis for maintaining jurisdiction under 28 USC § 1257(3). Appellant has, apparently, misunderstood a statement in a letter from the Clerk of the Supreme Court of the State of Washington (Appellant's Appendix A-7), wherein the

Clerk indicates that ROA I-50 was repealed and replaced by RAP 12.5(b)(3). This was nothing more than a change in the name and organization of the Rules of Appellate Procedure (RAP). RAP Title 12 now covers appellate court decision and procedure after decision.

Appellant's second basis of jurisdiction apparently is a violation of her civil rights under 42 USC §§ 1983, 1984 and 1985. Appellant then cites 28 USC § 1343(1), (2), (3) and (4). This section sets forth district court jurisdiction to hear civil rights actions. Appellant is appealing from an earlier trial court decision awarding her a verdict in the amount of $4,600.00 for personal injuries. This case does not involve violations of the 1964 Civil Rights Act as set forth in 42 USC §§ 1983, 1984 and 1985.

Finally, Appellant's request for certiorari review should be denied because the facts involved in this matter, as well as the arguments made to this Court, do not invoke this Court's jurisdiction to hear an appeal.

WHEREFORE, Appellee NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR., ask this Court to dismiss this appeal with each side to bear its own costs.

DATED: December 13th, 1979.

s/
ROBERT C. TAYLOR
Attorney for Appellee

APPENDIX

RULE I-50

PETITIONS FOR REHEARING

Any party to an appealed case may, after an opinion has been filed, present to the court, in the manner and time as hereinafter provided, a petition for rehearing.

Every petition for rehearing shall be filed within thirty days after the opinion in the cause has been filed. No more than one petition shall be filed by the same party. The filing of a petition for rehearing shall suspend the decision of the court until the cause is finally determined.

When a rehearing is granted, the clerk shall notify counsel for the respective parties thereof.

When an answer to a petition for rehearing is called for by the court, the clerk shall mail to the attorney of the party from whom the answer is required a copy of the original petition, with a request that he file an answer thereto within fifteen days and serve a copy thereof on opposing counsel.

Three copies each of the petition for rehearing and of the answer thereto, if called for, shall be filed with the clerk.

Petitions for rehearing and answers thereto may be printed, mimeographed, or typewritten. If a petition for rehearing be granted, the court may require additional copies of the petition, answer and briefs to be supplied in the manner indicated by the court.

Taken From: 76 Wn.2d, at lxix

TITLE 12. APPELLATE COURT DECISION AND PROCEDURE AFTER DECISION

RULE 12.1 BASIS FOR DECISION

(a) Generally. Except as provided in section (b), the appellate court will decide a case only on the basis of issues set forth by the parties in their briefs.

(b) Issues Raised by the Court. If the appellate court concludes that an issue which is not set forth in the briefs should be considered to properly decide a case, the court may notify the parties and give them an opportunity to present written argument on the issue raised by the court.

RULE 12.2 DISPOSTION ON REVIEW

The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require. Upon issuance of the mandate of the appellate court as provided in Rule 12.5, the action taken and decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court, unless otherwise directed upon recall of the mandate as provided in Rule 12.9, and except as provided in Rule 2.5(c)(2).

RULE 12.3 FORMS OF DECISION

(a) Decision Terminating Review. A "decision terminating review" is an opinion, order, or judgment of the appellate court or a ruling of a commissioner or clerk of an appellate court if it:

Taken From: RAP Title 12

(1) is filed after review is accepted by the appellate court filing the decision, and

(2) terminates review unconditionally, and

(3) is (i) a decision on the merits, or (ii) a decision by the judges dismissing review, or (iii) a ruling by a commissioner or clerk dismissing review, or (iv) an order refusing to modify a ruling by the commissioner or clerk dismissing review.

(b) Interlocutory Decision. An "interlocutory decision" is any opinion, order, or judgment of the appellate court or ruling of a commissioner or clerk which is not a decision terminating review.

(c) Ruling. A "ruling" is any determination of a commissioner or clerk of an appellate court. The ruling may be a decision terminating review or an interlocutory decision.

RULE 12.4 MOTION FOR RECONSIDERATION OF DECISION TERMINATING REVIEW

(a) Generally. A party may file a motion for reconsideration only of a decision terminating review which is not a ruling of the appellate court commissioner or clerk. The motion should be in the form and be served and filed as provided in Rules 17.3(a), 17.4(a) and (g), and 18.5, except as otherwise provided in this rule. A party must file a motion for reconsideration of a Court of Appeals decision terminating review as a condition of seeking review by the Supreme Court.

(b) Time. The party must file the motion for reconsideration within 20 days after the decision the party wants reconsidered is filed in the appellate court.

(c) Content. The motion should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised.

(d) Answer and Reply. A party should not file an answer to a motion for reconsideration or a reply to an answer unless requested by the appellate court.

(e) Length--One Copy. The motion, answer, or reply should not exceed 25 pages in length if double spaced or 20 pages if one and one-half spaced unless additional length is authorized under Rule 18.8. Only one legible copy should be filed.

(f) No Oral Argument. A motion for reconsideration will be decided without oral argument.

(g) Grant of Motion. If a motion for reconsideration is granted, the appellate court may (1) modify the decision without new argument, (2) call for new argument, or (3) take such other action as may be appropriate.

(h) Only One Motion Permitted. Only one motion for reconsideration may be filed, even if the appellate court modifies its decision or changes the language in the opinion rendered by the court.

[Amended July 2, 1976.]

RULE 12.5 MANDATE

(a) Mandate Defined. A "mandate is the written notification by the clerk to the trial court and to the parties of an appellate court decision terminating review. No mandate issues for an interlocutory decision.

(b) When Mandate Issued by Court of Appeals. The clerk of the Court of Appeals issues the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration, petition for review, or notice of appeal will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate:

(1) 20 days after the decision is filed, unless (i) a motion for reconsideration of the decision has been earlier filed, (ii) a notice of appeal the Supreme Court has been earlier filed, (iii) a petition for review to the Supreme Court has been earlier filed, or (iv) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed.

(2) If a motion for reconsideration is timely filed and denied, 30 days after filing the order denying the motion for reconsideration, unless a petition for review to the Supreme Court or a notice of appeal to the Supreme Court has been earlier filed.

(3) If a petition for review has been timely filed and denied by the Supreme Court, upon denial of the petition for review.

(c) When Mandate Issued by Supreme Court. The Clerk of the Supreme Court issues the mandate for a Supreme Court decision terminating review upon stipulation of the parties that no motion for reconsideration will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate:

(1) 20 days after the decision is filed, unless (i) a motion for reconsideration has been earlier filed, or (ii) the decision is a ruling of

the commissioner or clerk and a motion to modify the ruling has been earlier filed.

(2) If a motion for reconsideration is timely filed and denied, upon filing the order denying the motion for reconsideration.

RULE 12.6 STAY OF MANDATE PENDING DECISION OF APPLICATION FOR REVIEW BY UNITED STATES SUPREME COURT

The appellate court will not stay issuance of the mandate for the length of time necessary to secure a decision by the United States Supreme Court on an application for review, except in a case in which the penalty of death has been imposed.

RULE 12.7 FINALITY OF DECISION

(a) Court of Appeals. The Court of Appeals loses the power to change or modify its decision (1) upon issuance of its mandate in accordance with Rule 12.5, except when the mandate is recalled as provided in Rule 12.9, or (2) upon acceptance by the Supreme Court of review of the decision of the Court of Appeals.

(b) Supreme Court. The Supreme Court loses the power to change or modify a decision of the Court of Appeals upon issuance of the mandate of the Court of Appeals in accordance with Rule 12.5. The Supreme Court loses the power to change or modify a Supreme Court decision upon issuance of the mandate of the Supreme Court in accordance with Rule 12.5, expect when the mandate is recalled as provided in Rule 12.9.

(c) Special Rule for Costs. The appellate court retains the power to act on questions of

costs as provided in Title 14 after the issuance of the mandate.

(d) Special Rule for Law of the Case. The appellate court retains the power to change a decision as provided in Rule 2.5(c)(2).

RULE 12.8 EFFECT OF REVERSAL ON INTERVENING RIGHTS

If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, or the value of the property. An interest in property acquired by a purchaser in good faith under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.

RULE 12.9 RECALL OF MANDATE

(a) To Require Compliance With Decision. The appellate court may recall a mandate issued by it to determine if the trial court has complied with an earlier decision of the appellate court given in the same case. The question of compliance by the trial court may be raised by motion to recall the mandate, or by initiating a separate review of the lower court decision entered after issuance of the mandate.

(b) To Correct Error. The appellate court may recall a mandate issued by it to correct an inadvertent mistake, to modify a decision obtained by fraud of a party or counsel in the appellate court, or to modify a decision of the appellate court which was beyond the jurisdiction of the court.

(c) Time for Motion. The motion to recall the mandate must be made within a reasonable time.

IN THE SUPREME COURT OF THE UNITED STATES

DOCKET NO. 79-776

ERICH KOKER and BEATRICE E. KOKER, husband and wife,	NO. 79-776
Plaintiffs/Appellants/ Petitioners,	REPLY IN
V	OPPOSITION
NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR.	TO MOTION TO DISMISS
Respondents/Appellee.	

REPLY IN OPPOSITION

TO MOTION TO DISMISS

Beatrice E. Koker, Pro Se
939 - North 105th Street
Seattle, Washington 98133
1-206-783-6998

Pro Se

IN THE SUPREME COURT OF THE UNITED STATES

ERICH KOKER and BEATRICE E. KOKER, husband and wife, Plaintiffs/Appellants/Petitioners, V NOEL B. SAGE and WINETTA SAGE, husband and wife, and NOEL B. SAGE, JR. Respondents/Appellee	NO.79-776 -REPLY IN -OPPOSITION -TO THE -RESPONDENTS -MOTION TO -DISMISS

Dated: December 19, 1979: December 26, 1979:

COME NOW the plaintiff/appellant/petitioner Erich Koker and Beatrice E. Koker, husband and wife, in opposition to respondents/appellee motion to dismiss the appeal No. 79-776, Koker V Sage. This reply in opposition is pursuant to Rule 16(4) of the Rules of the Supreme Court of the United States. I respectfully ask this Court to accept jurisdiction of this appeal pursuant to the contents of the Jurisdictional Statement and Appendix.

REPLY TO RESPONDENTS: NATURE OF THE CASE:

The Respondent Attorney states page 1 paragraph 1 that the plaintiff/appellant Beatrice Koker was awarded judgment in the amount of $4,600. This judgment is from a confused jury whom the jury foreman was compelled to persuade and convince approximately 2 hours, that the victim of permanent injuries in an admitted liability was "not guilty."

APPENDIX B-1: JURISDICTIONAL STATEMENT:

Ryan v Westgard 12 Wash App 500 (1975) is a Comparison Case for the adequacy of damages. The Court of Appeals Division I stated in Ryan v Westgard, supra, that $145,000. is a sensible award for a drop foot injury. The same Court of Appeals Div. I upheld the jury verdict of $4,600. for a drop foot injury for Beatrice Koker, and in addition knew the jury was confused.

REPLY TO RESPONDENTS: NATURE OF THE CASE:

(Respondent Attorney) The Respondent Attorney states page 1 second paragraph last 2 lines of his motion: Quote: "Appellant is now before this Court, apparently because of a claim that she was denied a fair trial." SEE: APPENDIX A-15(a)(b) JURISDICTIONAL STATEMENT. (The Appeal)

(Answer By Beatrice Koker:)

The Respondent Attorney is not complete. There are three federal questions for this appeal. (a) The Unfair Trial and the effect upon abuse of discretion by the trial court, followed by abuse of discretion by the appellate structure on appeal. (b) NO REHEARING, Constitutional Rights denied a citizen. (c) The NEW ISSUE. Original records and files removed from the custody and jurisdiction of the Court of Appeals Division One for 48 days "under color of law."

Cont'd

(Answer By Beatrice Koker - Cont'd:)

My claim in appeal to the United States Supreme Court is that my Constitutional Rights have been violated and the State of Washington Court of Appeal (including Supreme Court of Washington State) have abused their discretion in not permitting nor allowing remedy and redress for the stated facts throughout the Jurisdictional Statement.

The judgment of the trial in 1976 is the "EFFECT" of the unfair trial. There will be a separate tort action for the issue of the "CAUSE" of the EFFECT OF THE UNFAIR TRIAL.

FEDERAL QUESTIONS JURISDICTIONAL STATEMENT:

APPEAL	St. Of Case	Federal Question	Juris.
Unfair Trial	p 55-107	p 115-122	p 11-18
No Rehearing	p108-112	p 123-127	p 11-18
NEW ISSUE	p113	p 128-131	p 11-18

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT

"A rose by any other name . . . ." does not apply to the controversy herein regarding ROA I-50 Rehearing. The Respondent Attorney says the Rule ROA I-50 is just changed in name and organization of the Rules of Appellate Procedure. Changed to 12.5(b)(3) and replaces the "rehearing rule" and is for the same purpose.

THOSE TWO RULES ARE ENTIRELY DIFFERENT!

The difference is this: ROA I-50 REHEARING

12.5(b)(3): . . . . . .MANDATE

Quoting:: (b) "When Mandate Issued by Court of Appeals."

> "The Clerk of the Court of Appeals issues the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration, petition for review, or notice of appeal will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate."

Quoting: Rule 12.5(b)(3): When Mandate Issued By Court Of Appeals

(3) "If a petition for review has been timely filed and denied by the Supreme Court, upon denial of the petition for review."

EXHIBIT III: BOTH RULES TO COMPARE:

***** In essence this rule is saying the end of the appeal can be stipulated to by the parties involved, or when the petition for review is denied by the Supreme Court, the MANDATE is issued by the clerk of the Court of Appeals. However, for a mandate to be issued there must be written notification as in 12.5(a):

EXHIBIT III:

***** THERE IS NO REHEARING. ROA I-50 is repealed and Rule 12.5(b)(3) is merely the issuance of a mandate upon denial of a petition for review and has nothing whatsoever to do with a "rehearing."

Cont'd

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT (Cont'd)

***** My discovery pro se that no rehearing is unconstitutional came after filing the appeal to the United States Supreme Court in the due course of research for jurisdiction.

(The Intention For Rehearing:) EXHIBIT I:

Partially quoting from the letter sent by petitioner Beatrice Koker to the Washington State Supreme Court, dated February 5, 1979, regarding REHEARING: SEE: EXHIBIT I: Quote:

REHEARING: "A petition for rehearing will be filed by appellant/petitioner pro se 30 days from date of service. ROA I-50 Washington Rules of Court 1976 Desk Copy Page 412.

DATE OF FILING: "Monday March 5, 1979. Would you please verify this filing date to be correct? Date of Service Feb 3, 1979."

(Answer To Rehearing Intention:) EXHIBIT II:

A reply to the above letter was sent to me by the Washington State Supreme Court Clerk, Honorable John J. Champagne. EXHIBIT II HEREIN AND ALSO APPENDIX A-7 JURISDICTIONAL STATEMENT.

(Answer To Rehearing Intention:) EXHIBIT II:

Quote: "This is to acknowledge receipt of your letter of February 5, 1979, wherein you indicate that it is your intention to file a motion for reconsideration of the order entered by this Court on February 2, 1979, denying the above entitled petition for review."

"In accordance with RAP 12.5(b)(3) (ROA I-50 was repealed in 1975) the decision of the Court of Appeals became final on the date that the petition for review was denied. No further proceedures are available under the rules, as a consequence, the Court will not consider any additional pleadings in the cause."

NO FURTHER PROCEEDINGS, INCLUDING REHEARING.

***** The repeal of ROA I-50 left in its wake Rule 12.5(b)(3), which rule is nothing more than FINALITY OF MANDATE UPON DENIAL OF PETITION FOR REVIEW EXCLUDING REHEARING AND CONSTITUTIONAL RIGHTS OF THIS PETITIONER.

SEE: APPENDIX A-8 through A-14 JURISDICTIONAL STATEMENT TRYING TO BE "HEARD." THERE IS A RESUME' OF MISERY RECORDED BECAUSE THERE IS NO REHEARING IN THE STATE OF WASHINGTON. PERSONAL KNOWLEDGE

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT (Cont'd)

***** The Rule 12.5(b)(3) says no rehearing. The Clerk of the State Supreme Court reiterates no rehearing. No further procedures available after the petition for review is denied.

***** I begged to be heard. Pleaded to be listened to. Agonized to be given redress and remedy and justice. To no avail.

***** There was vital evidence regarding deceit in trial and in desperation searched for a way to reach the State Supreme Court when the rehearing departed in repeal of a rule. I did not know at that time that my constitutional rights were being denied, but there was a desperate attempt to be heard as evidenced in APPENDIX A-8 through A-14 of the JURISDICTIONAL STATEMENT.

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT (Cont'd)

***** Discovery of the unconstitutionality of "no rehearing" was made one day on the couch in the First Aid Room while thumbing through the Constitution of the State of Washington page by page.

***** The Respondent Attorney is apparently attempting to intercept Federal Question II - "The Rehearing." State v Pudman 177 P 2d 376, 65 Ariz 197, says "day in court is not complete" until the final rehearing before the Supreme Court."

***** The Appeal to the United States Supreme Court is taken under 28 U.S.C.A. §1257 and the Constitution. The Constitution of Washington State Art 4 §2 page 33 is xeroxed on page 123 of the Jurisdiction Statement and says: "Quote:" . . . . . Cont'd

Constitution Of Washington State Art 4 § 2

p 33:

> "Under 28 U.S.C 1257 restricting United States Supreme Court's review of state decisions to judgments rendered "by the highest court of the state in which a decision could be had," judgment rendered by department one of the Supreme Court of Washington is reviewable in United States Supreme Court where rehearing en banc before Washington Supreme Court is not granted as a matter of right. . "

SEE: PAGE 123 JURISDICTIONAL STATEMENT

***** (a) Comparison Rules Exhibit III herein, prove there was no rule substituted for rehearing. (b) There is intention in writing for rehearing (c) Denial of that intention for rehearing is unconstitutional.

***** I respectfully ask the jurisdiction be accepted in the United States Supreme Court and to enter the legal confines of the State Courts that have denied me both United States Constitutional Rights and State Constitutional Rights as per Federal Questions I - II - III.

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT (Cont'd)

"Under Color Of Law":

Respondent Attorney's motion to dismiss, his page 2 paragraph 2, mentions Civil Rights, saying the constitutional citations do only apply in district court jurisdiction to hear civil rights actions. He is referring to my Federal Question III - NEW ISSUE.

This is in regard to the original file and records of #4916-I taken from the Court of Appeals for 46 days, not even docketed as released from the court, and then 12 days extra "under color of law" time granted to retain the original files out of the custody of the apellate court. This unconstitutional deed is directly involved in this Appeal to the United States Supreme Court. The Motion for Recertification III will be heard in the State Supreme Court January 11, 1979. EXHIBIT IV: Cont'd

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT (Cont'd)

"Under Color Of Law:" (Cont'd)

The certification of the records for the appeal to the United States Supreme Court was defiled by the release of the original papers and would have been so even if they had been released to me.

This is the new issue directly involving this appeal and is a relevant issue and not a separate action in a district court. I do not want to sue anyone in district court. I simply need the certification of those records and have submitted 3 motions to the State Supreme Court to recertify the records to the approval and acceptance of the United States Supreme Court, and to take whatever steps necessary in sanctions and terms for those who are responsible so this removal of original files will not happen again to anyone else.

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT (Cont'd)

"Under Color Of Law:" (Cont'd)

The jurisdiction for the NEW ISSUE in the Supreme Court of the United States is according to 42 USCA 1983-1984-1985 and 28 USCA 1343 (1)(2)(3)(4). I am trying to perfect an appeal peacefully. The United States Supreme Court will now have the jurisdiction to act in whatever manner necessary to obtain certification of those original records to their satisfaction and completion of this appeal if the jurisdiction is approved.

Vague: The Respondent Attorney is vague in his reasons for a motion to dismiss this appeal, just stating the appeal should be denied because the facts involved in this matter as well as the arguments made to the Court, in his opinion, do not invoke the Court's jurisdiction to hear the appeal. HOW? WHY? WHERE? SPECIFICS?

The motion is only the opinion of the Respondent Attorney and difficult to answer.

The Record:

The injuries of petitioner are adversely affected by litigation even when represented by counsel. The repercussions are vastly increased and aggravated as pro se these past 3½ years with proof from the record:

1976

RP Volume I p 64 Lines 1-6

SOLA, CROSS

Q When this lawsuit is concluded?

A Un-huh (Yes).

Q And you would agree that a pending lawsuit can be an emotional factor that effects a person's progress--

A (Interjecting) It certainly can.

Q (Continuing) --while it's pending?

CONCLUSION:

The Jurisdictional Statement and Appendix are two volumes of dedication in sacrifice for the purpose of truth and justice to reveal to the Highest Court In the Land what a citizen seeking justice must do when wronged in a court of law and no recourse on appeal.

The Jurisdictional Statement was written with respect and even a facet of forgiveness along with the courage demanded, with words as the only weapon to defend what is right.

The Legal Nomad:

This petitioner Beatrice Koker has wandered 3½ years, bewildered by the vast unending wilderness of lawbooks, but yearning for justice promised in the Constitution.

APPELLANT HAS NOT FAILED TO INVOKE THE JURISDICTION OF THIS COURT (Cont'd)

The Legal Nomad:

I am in legal bondage, a slave to injustice. I sincerely and respectfully ask you to accept jurisdiction and hear my appeal and never dismiss this case.

I ask you to reward justice and set me free.

Respectfully Submitted,

Beatrice E. Koker

Beatrice E. Koker, pro se
939 - North 105th Street
Seattle, Washington 98133
Telephone: 1-206-783-6998

NOTARY PUBLIC:

Subscribed and Sworn to before me this 27th day of December, 1979

(SEAL)

Nicola T. Clarke
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON

Residing at Kent
(Place of Residence)

COPIES OF REPLY IN OPPOSITION TO MOTION TO DISMISS SENT CERTIFIED MAIL TO:

Mr. Robert C. Taylor
4333 Brooklyn Ave N. E.
18th Floor
Seattle, Washington 98185

Mr. R. Scott Fallon
4333 Brooklyn Ave N.E.
18th Floor
Seattle, Washington 98185

Mr. Kenneth L. LeMaster
4333 Brooklyn Ave N.E.
18th Floor
Seattle, Washington 98185

DOCKET NO: 79-776

RECEIVED
FEB - 5 1979
CLERK OF COURT OF APPEALS
STATE OF WASHINGTON I

February 5, 1979

The Supreme Court Justices
The State of Washington
Olympia, Washington 98504

RE: Koker v Sage
Supreme Court No. 45846 No.
Appellate Court No. 4916-I

Honorable Supreme Court Justices:

DECISION: This letter is to acknowledge receipt of your decision "DENIED" of Petition for Review February 2, 1979. Thank you for your consideration of this matter.

REHEARING: A Petition for Rehearing will be filed by Appellant/Petitioner Pro Se 30 days from date of service. ROA I-50 Washington Rules of Court 1976 Desk Copy page 412.

DATE OF FILING: (Rehearing) Monday March 5, 1979. Would you please verify this filing date to be correct? Date of Service: Feb 3, 1979.

TEMPLE OF JUSTICE

On the"day of decision" en banc February 2, 1979, I was in the Supreme Court Courtroom in the elegance, dignity, beauty, quiet and peace it affords. Friends provided the financial way to Olympia for me. I was able to stay only one hour physicially, but feel honored and grateful to have been in the Temple of Justice just once.

Just outside the courtroom there is a "Hall of History" with the photograph portraits of the Supreme Court Justices of the past 126 years. It will be greatly appreciated if you could tell me where to get the photographs and life history of each of these Supreme Court Justices.

Thank You.

COPY TO:
The Court of Appeals
Kenneth L. LeMaster, Defense/Respondent
R. Scott Fallon, Defense/Respondent
King County Clerk File

Sincerely,
Beatrice E. Koker
Beatrice E. Koker
939 - North 105th St.
Seattle, Washington 98133

RECEIVED
FEB 5 - 1979

Exhibit I

JOHN J. CHAMPAGNE
CLERK

REGINALD N. SHRIVER
DEPUTY

The Supreme Court

State of Washington

Olympia
98504

753 5080
AREA 206

February 6, 1979

Mr. Erich Koker
Ms. Beatrice Koker
939 North 105th Street
Seattle, Washington 98133

Dear Mr. Koker:

RE: Supreme Court No. 45846 - Koker v. Sage
Court of Appeals No. 4916-I
King County No. 77362

This is to acknowledge receipt of your letter of February 5, 1979, wherein you indicate that it is your intention to file a motion for reconsideration of the order entered by this Court on February 2, 1979, denying the above entitled petition for review.

In accordance with RAP 12.5(b)(3) (ROA I-50 was repealed in 1975) the decision of the Court of Appeals became final on the date that the petition for review was denied. No further procedures are available under the Rules, as a consequence, the Court will not consider any additional pleadings in the cause.

Very truly yours,

JOHN J. CHAMPAGNE
Clerk

JJC:aje

cc: Mr. Kenneth LeMaster
Mr. R. Scott Fallon
Honorable Richard Taylor, Clerk
Division I, Court of Appeals
Honorable Kenneth Helm, Clerk
King County Superior Court

Exhibit II

Exhibit II

Washington Rules of Court
1976 Desk Copy

Rehearing

RULE 1-50. PETITIONS FOR REHEARING

Any party to an appealed case may, after an opinion has been filed, present to the court, in the manner and time as hereinafter provided, a petition for rehearing.

Every petition for rehearing shall be filed within thirty days after the opinion in the cause has been filed. No more than one petition shall be filed by the same party. The filing of a petition for rehearing shall suspend the decision of the court until the cause is finally determined.

When a rehearing is granted, the clerk shall notify counsel for the respective parties thereof.

When an answer to a petition for rehearing is called for by the court, the clerk shall mail to the attorney of the party from whom the answer is required a copy of the original petition, with a request that he file an answer thereto within fifteen days and serve a copy thereof on opposing counsel.

Three copies each of the petition for rehearing and of the answer thereto, if called for, shall be filed with the clerk.

Petitions for rehearing and answers thereto may be printed, mimeographed, or typewritten. If a petition for rehearing be granted, the court may require additional copies of the petition, answer and briefs to be supplied in the manner indicated by the court.

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Washington Court Rules 1979
Rule 12.5 (b) (3)

Mandate

RAP 12.5 RULES ON APPEAL

RULE 12.5 MANDATE

(a) Mandate Defined. A "mandate" is the written notification by the clerk to the trial court and to the parties of an appellate court decision terminating review. No mandate issues for an interlocutory decision.

→ (b) **When Mandate Issued by Court of Appeals.** The clerk of the Court of Appeals issues the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration, petition for review, or notice of appeal will be filed. In the absence of that stipulation, and except to the extent the mandate is stayed as provided in Rule 12.6, the clerk issues the mandate:

(1) 20 days after the decision is filed, unless (i) a motion for reconsideration of the decision has been earlier filed, (ii) a notice of appeal to the Supreme Court has been earlier filed, (iii) a petition for review to the Supreme Court has been earlier filed, or (iv) the decision is a ruling of the commissioner or clerk and a motion to modify the ruling has been earlier filed.

(2) If a motion for reconsideration is timely filed and denied, 30 days after filing the order denying the motion for reconsideration, unless a petition for review to the Supreme Court or a notice of appeal to the Supreme Court has been earlier filed.

→ (3) If a petition for review has been timely filed and denied by the Supreme Court, upon denial of the petition for review.

Exhibit III

JOHN J. CHAMPAGNE
CLERK

REGINALD N. SHRIVER
DEPUTY

The Supreme Court

State of Washington
Olympia
98504

November 28, 1979

Ms. Beatrice E. Koker
939 North 105th Street
Seattle, Washington 98133

Mr. Kenneth L. LeMaster
Mr. R. Scott Fallon
Attorneys at Law
Plaza Building
4333 Brooklyn Avenue N.E.
Seattle, Washington 98105

Gentlemen and Ms. Koker:

Re: Supreme Court No. 45846 - Erich Koker, et ux. v. Noel B. Sage, et ux., et al.
Court of Appeals No. 4916-I

Petitioner Koker's Motion to Modify the Clerk's Ruling of November 19, 1979, refusing to file previous motions regarding the above referenced cause, was filed on this date. The motion will be set for consideration before a Department of the Court on January 11, 1979.

Very truly yours,

JOHN J. CHAMPAGNE
Clerk

JJC:dd

cc: Honorable Richard D. Taylor, Clerk
Division I, Court of Appeals

Exhibit IV